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No. 914

In the Supreme Court of the United States

October Term, 1956.

GULF OIL CORPORATION, *Appellant*,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA; RAY C. JONES, WILBURN CARTWRIGHT, and HAROLD FREEMAN, as Members of said Corporation Commission and as Individuals, *Appellees*.

On Appeal from the United States District Court for the Western District of Oklahoma.

Jurisdictional Statement.

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April 1957.

INDEX.

	PAGE
Opinions below	1
Jurisdiction	1
Statutes involved	2
Questions presented	3
Statement of the case	4
The questions are substantial	13
Appendices:	
1. Opinions below	19
2. Judgment	37
3. Statutes	38

CITATIONS.

Cases—

A. F. of L. v. Watson, 327 U. S. 582	2
Alabama Public Service Commission v. Southern Ry. Co., 341 U. S. 341	3, 9, 13, 16
Baldwin v. Seelig, 294 U. S. 511	15
Burford v. Sun Oil Co., 319 U. S. 315	16
Champlin Refining Co. v. Corporation Commission of Oklahoma, 286 U. S. 210, 235	14
Dean Milk Co. v. Madison, 340 U. S. 349	15
Doud v. Hodge, 350 U. S. 485	2
Hudd & Sons v. Du Mond, 336 U. S. 525	15
Kansas, ex rel. Fatzer, v. Sinclair Pipe Line Co., 304 P. 2d 930 (Kan. 1956)	17
Oklahoma v. Kansas Natural Gas Co., 221 U. S. 229	15
Pennsylvania v. West Virginia, 262 U. S. 553	15
Public Utilities Commission of California v. United States, No. 447, October Term 1956, probable jurisdiction noted December 3, 1956	2, 13
Public Utilities Commission of Ohio v. United Fuel Gas Co., 317 U. S. 456	2, 18

PAGE

Railroad Commission of Texas v. Rowan & Nichols Oil Co., 310 U. S. 573, 311 U. S. 614 16
Southern Pacific Co. v. Arizona, 325 U. S. 761, 770 17
Toomer v. Witsell, 334 U. S. 385 18

Statutes—

28 U. S. C., Sec. 1253 2
28 U. S. C., Secs. 1331, 1332 (a) (1), 2281, 2284 1
Oklahoma Oil Pipe Lines Act, Okla. Stats. (1951), Title 52, Secs. 51-66 2
Oklahoma Oil and Gas Conservation Act, Okla. Stats. (1951), Title 52, Secs. 86.1, 86.2, 86.4, 86.5, 97, 98, 102, 110, 111 2
Oklahoma Oil Conservation Act, Okla. Stats. (1951), Title 52, Secs. 271-279 2
Trade Agreements Extension Act of 1955, Sec. 7, 69 Stat. 166, 19 U. S. C. (Supp. III), Sec. 1352a (b).. 14

Miscellaneous—

First Annual Report of the President of the United States on the Trade Agreements Program, H. R. Doc. No. 93, 85th Cong., 1st Sess. 9-10 (1957).... 14
S. Rep. No. 232, 84th Cong., 1st Sess. 4 (1955)..... 14

IN THE SUPREME COURT OF THE UNITED STATES.
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No. _____

GULF OIL CORPORATION, *Appellant*,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA; RAY C. JONES, WILBURN CARTWRIGHT, and HAROLD FREEMAN, as Members of said Corporation Commission and as Individuals, *Appellees.*

On Appeal from the United States District Court for the Western District of Oklahoma.

JURISDICTIONAL STATEMENT.

Appellant has appealed from a judgment of the United States District Court for the Western District of Oklahoma, convened as a statutory court of three judges, and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal, and that substantial questions are presented upon the record.

Opinions Below.

Separate opinions were filed by each of the three trial judges. They are reported at 147 F. Supp. 640, and are printed as Appendix 1 to this statement. The prevailing opinion is at page 19, the concurring opinion at page 26, and the dissenting opinion at page 26.

Jurisdiction.

The action was brought pursuant to 28 U. S. C., Secs. 1331, 1332(a)(1), 2281 and 2284, to enjoin enforcement of

orders of the Corporation Commission of the State of Oklahoma on the ground of unconstitutionality. The judgment of the district court of three judges denied the injunction and dismissed the action. This judgment was announced in opinions filed on December 19, 1956, and formal judgment bearing the same date was entered on February 14, 1957. Notice of appeal was filed on February 15, 1957, in the trial court. Jurisdiction of this Court to review this judgment upon direct appeal is conferred by 28 U. S. C., Sec. 1253. The jurisdiction claimed has been exercised in the following like cases, among others: *Public Utilities Commission of California* v. *United States*, No. 447, October Term 1956, probable jurisdiction noted December 3, 1956 (now pending); *Doud* v. *Hodge*, 350 U. S. 485; *A. F. of L.* v. *Watson*, 327 U. S. 582; *Public Utilities Commission of Ohio* v. *United Fuel Gas Co.*, 317 U. S. 456.

Statutes Involved.

The action below attacked orders of the Corporation Commission of the State of Oklahoma, general and legislative in character, which were entered on June 26, 1956, and August 21, 1956, which appear at length in the record, and the pertinent terms of which are excerpted in the statement of the case which follows at page 7, *infra*.

The challenged orders are rested upon the authority of the following statutes of the State of Oklahoma: Oklahoma Oil Pipe Lines Act, Okla. Stats. 1951, Title 52, Secs. 51-66; Oklahoma Oil and Gas Conservation Act, Okla. Stats. 1951, Tit. 52, Secs. 86.1, 86.2, 86.4, 86.5, 97, 98, 102, 110, 111; Oklahoma Oil Conservation Act., Okla. Stats. 1951, Tit. 52, Secs. 271-279. They are reproduced in full in Appendix 3 to this statement.

Questions Presented.

1. Whether the Commerce Clause of the Constitution (Art. I, Sec. 8, cl. 3) is infringed by compulsory orders of the Corporation Commission of Oklahoma requiring all purchasers of crude oil, as well for interstate and foreign markets as for local consumption, to buy such oil in fixed quantities from Oklahoma sources, against their will and in excess of the requirements of their out-of-state refining markets; and do said orders so infringe when applied to and enforced against appellant, which buys Oklahoma crude oil solely to combine with out-of-state crude oil in supplying out-of-state refineries.

2. Whether the federal district court of three judges erred in abstaining from deciding the question of the repugnancy of the orders to the Commerce Clause (Art. I, Sec. 8, cl. 3) under the doctrine of *Alabama Public Service Commission* v. *Southern Railway Co.*, 341 U. S. 341, and like cases, in view of the restraints imposed by the local orders upon marketing of foreign and out-of-state crude oil in the national refining market.

3. Whether equitable jurisdiction exists to enjoin the orders, in view of their disruption of the nationwide system of crude oil marketing, and the imminent irreparable injury to appellant consisting of fines, cumulative penalties, and irrecoverable economic losses resulting from enforcement or compliance.

4. Whether the orders are repugnant to the Due Process Clause of the Fourteenth Amendment (Amend. XIV, Sec. 1) as applied to appellant, in view of their extraterritorial restraints upon appellant's freedom to purchase crude oil produced in other states, their restrictions on ap-

pellant's liberty to contract with Oklahoma producers for the purchase of oil in quantities and upon terms agreeable to both, and their appropriation of appellant's property to the compulsory purchase of Oklahoma oil for which it has no desire, need, or market.

Statement of the Case.

By this action Gulf Oil Corporation seeks to enjoin enforcement of two orders issued by the Corporation Commission of the State of Oklahoma, and the issuance of like future orders, which purport to regulate the purchase and sale of crude oil. They were challenged as in contravention of the Commerce Clause (Art. I, Sec. 8, cl. 3) of the Constitution of the United States and under the Fourteenth Amendment thereto.

Gulf Oil Corporation buys crude oil in Oklahoma for resale in other states, and for no other market or purpose. It buys in quantities sufficient to satisfy its out-of-state market for the Oklahoma product, and accepts delivery of its purchases in interstate carriers under simultaneous tenders for transmission to its market in Ohio.

At the date of the challenged orders, Gulf had valuable trading relations with the owners of 1668 producing leases in Oklahoma whereby the crude product of these leases was regularly sold, in quantities acceptable both to buyer and seller, to Gulf for immediate transmission to its Ohio market. These purchases and sales were and are controlled by contracts commonly called "Division Orders," which are freely terminable at the will of either party. Gulf had and has like relations with the owners of more than three thousand other producing oil leases located in Texas, New Mexico, Louisiana, Mississippi, Alabama, and Illinois.

The leases from which Gulf purchases oil in the area described can produce, and are authorized to produce, more oil than Gulf requires for its accessible refinery market. Appellant selects oil for its purchases in consideration of factors of quality, cost and facility of delivery to the refining market. Gulf is offered more oil than it desires to buy, and is offered more oil than it can resell upon its existing market outlets.

By the regulatory orders complained of, the Corporation Commission of the State of Oklahoma has sought to coerce Gulf and other interstate buyers to enlarge their purchases of crude oil from Oklahoma leases beyond their respective desires, and beyond the demand which Gulf's market affords for the Oklahoma product. By this means Oklahoma has attempted to pre-empt portions of the oversupplied national market previously enjoyed by the crude oil production of other states, and to impede or prevent importation of crude from foreign sources. The orders challenged have both the purpose and effect stated.

The questioned orders are two of a series of orders issued periodically by appellees in the purported exercise of power to regulate production of oil to the prevention of waste. Presumptively, the lawful purpose of such an order is to conform production to available markets, to the end that wasteful storage aboveground be avoided and the available market be equitably apportioned among producers. To this end, findings are made as to the market availing from time to time, and production within the state is presumptively limited to the total which can be sold immediately.

Under pressures not material to the issue, appellees have permitted their periodic allowables to rise to unrealistic levels, until the total of permitted production in Oklahoma exceeded the voluntary demand. In consequence, Gulf and other interstate buyers apportioned the total of their mar-

ket requirements among producers from whom they were currently buying, and purchased ratably from these producers, but in quantities less than their respective authorized production. This purchasing practice became commonly known as "purchaser proration," and was the subject of complaint by producers whose aspirations exceeded the voluntary demand for their product. A considerable quantity of oil production was thus authorized but unabsorbed by the voluntary market.

The challenged orders attempted to supply an involuntary market for the rejected excess. As Oklahoma consumes about 40% of its production, the coercion of the orders fell on out-of-state markets.

On June 26, 1956, the first of the questioned orders was entered. It contained the usual anticipatory findings respecting quantity demands for crude oil in the period with which it dealt. It fixed allowable production for the period as an amount equalling the finding of the market demand. The allowable figure was in excess of true market demand, and was in excess of current experience in voluntary sales. But the order of June 26, 1956, departed from the form and content of preceding allowable orders, and took specific cognizance of the refusal of the voluntary market to absorb the quantity which the Commission had determined to be the fair demand for Oklahoma oil. It noted that substantial quantities of allowed production remained unsold, and that incidental problems of a local nature were resulting from the excess of allowable production over the market therefor. It concluded that the only way that its local problem could be solved was to command the buyers of oil to purchase the excess notwithstanding their wishes and notwithstanding other effects upon interstate trading in the

national market for crude oil. The pertinent and challenged portion of the order of June 26, 1956, is as follows:

"FINDINGS.

• • • • • • • •

"40. That for the past several months we have had pipe line or purchaser proration applicable to many of the wells and pools in the state; that the underproduction accumulated to the various wells because of pipe line proration now exceeds 100,000 barrels and will probably result in the violation of correlative rights in that many of the wells will never be able to produce the accumulated underage. That the only way that the correlative rights of the various operators and royalty owners might be protected is for the takers and purchasers to take the amount fixed by this order, and that therefore this order should provide that all takers and purchasers shall take the amount fixed in this order unless in an extreme emergency an application is filed for relief from that provision and permission is granted by the Corporation Commission to take less than the amount provided by this order after notice and hearing as provided by law.

ORDER.

It Is Therefore Ordered by the Corporation Commission of Oklahoma as follows:

• • • • • • • •

26. That all takers and/or purchasers of crude oil in Oklahoma shall take the full amount of oil allowed by this order unless relieved therefrom by this Commission after notice and hearing as provided for by law."

The order last quoted was entered without previous notice to buyers that its subject matter was under consideration. Under Oklahoma law the same was immediately reviewable by the courts, without motion or other recourse

for reconsideration, modification or like proceeding. The order likewise was immediately enforceable both by criminal and civil sanctions of the appellees and the courts.

Gulf immediately sued to enjoin enforcement of the order but was refused temporary restraint pending trial.

On August 21, 1956, a further order for a succeeding period was entered. At the hearing from which this order emanated, Gulf, among others, appeared to protest inclusion of the above quoted provision, urging that the same intruded upon and unduly interfered with interstate commerce. Gulf specifically urged that transactions in interstate commerce be exempted or excepted from the command to make involuntary purchases. On this occasion the objective of the mandatory purchase provision was made clear by comment of the Commission, in session, that its purpose was to assure Oklahoma of its appropriate share of the national market for crude oil, and that purchasers could increase their demand for Oklahoma oil by reduction of imports from foreign countries. The new order was issued and included the above quoted provisions.

The mandatory purchase provision of the challenged orders has become the settled policy of appellees and the State of Oklahoma. Not only was the order repeated in the face of challenge under the "Commerce Clause," but it has reappeared in every subsequent allowable order of the appellees, and is current at this date. Appellant charges in its action that if the orders be sustained, Oklahoma will be free to define its own share of the hitherto competitive national market for crude oil, and to preempt the same; other oil producing states will have and exercise similar power in retaliation; and the foreign commerce of the nation in oil will exist at the option and indulgence of its states.

The action below was commenced immediately after entry of the order of June 26, 1956. Following entry of the order of August 21, 1956, Gulf's complaint was amended to include this order as well, and the cause proceeded to early trial on September 10, 1956.

Appellees had interposed a motion to dismiss the complaint upon a variety of grounds which included the plea that the United States courts should abstain from exercise of their admitted jurisdiction under the doctrine of *Alabama Public Service Commission* v. *Southern Railway Co.*, 341 U. S. 341. This motion was heard by the full court on the trial date, but in advance of the reception of evidence, and was overruled. The court then heard the evidence of the parties tendered upon the merits of the cause.

Detailed evidence was addressed to the effect of the challenged orders upon interstate commerce in crude oil and to the extent of the resulting burden and interference. Evidence likewise was addressed to the effect of the orders upon the interstate trade of appellant in the oil produce of Oklahoma; and to the imminence, extent and irreparable character of the injury to appellant which would occur in consequence of enforcement. It was shown that Gulf had no market for the quantities of oil tendered to it under the mandatory purchase orders, and that other interstate buyers of Oklahoma crude were in like circumstance. It was shown that storage facilities available to Gulf were approaching exhaustion, and that oil stocks aboveground were already excessive in the industry generally. It was proved that nearly 60% of Oklahoma's production must sell upon the Centrol States refining market, and that this market was greatly oversupplied. The intrusion of large quantities of new production from the mountain states, and the appearance of large increases in Canadian imports into the

Central States market was likewise shown. Great quantities of oil from Texas, New Mexico and Louisiana likewise compete for the custom of the Central States buyer. In this condition of oversupply and extensive involuntary storage, the effect of the questioned mandatory purchase orders was interpreted by experts of the first rank, whose testimony is unchallenged in the record.

It was shown that an interstate buyer for the Central States refining market, confronted with a mandatory order to buy quantities in excess of its desire from sources within a particular state, must elect one of five possible options:

1. The buyer might elect to cease purchases altogether in Oklahoma and withdraw from doing business in the state. In the instance of Gulf, this would result in an effective embargo of the commerce and trading relations existing between Gulf and the owners of 1668 producing leases in Oklahoma, each of which had theretofore enjoyed a valuable and satisfactory voluntary interstate commerce. It would also effect an appropriation of property of Gulf, for the Division Order contracts involved are of great value. It should be noted upon this point that appellees do not admit that Gulf could withdraw from Oklahoma without their consent, and they do not admit that this alternative is open to a buyer who has once entered the Oklahoma market.

2. Within the literal terms of the orders, an interstate buyer might elect to discontinue purchasing relations with a sufficient number of producing leases to permit its purchases from the remaining producers to be increased to the commanded quantities. The consequence of this election would be an interruption and embargo of the interstate trading relations theretofore existing between the producers of the abandoned leases and the buyer for the out-of-state market. In the instance of Gulf, this would result in the interrup-

tion of hundreds of voluntary and satisfactory trading relations in interstate commerce, and in consequent great economic loss to the appellant. Again it should be noted that Appellees do not admit that this alternative is available to Gulf or another buyer, but, on the contrary, contend that such buyers may not discontinue purchasing from any wells except with the permission of appellees.

3. A buyer who purchases oil in a number of states for transmission to the Central States market (as Gulf does) might elect to reduce its purchases in states other than Oklahoma, and to increase its purchases of Oklahoma crude by an equivalent amount. In this circumstance the orders are an embargo upon the movement and sale of oil produced in states other than Oklahoma, and are a direct appropriation of the share of the national market which would otherwise fall to these states. The rivalries and retaliations between states which this expedient would cause are the precise consideration which the Commerce Clause was designed to meet and prevent.

4. If the buyer chances to be an importer of Canadian crude into the Central States market (which Gulf is not) the said buyer might elect to reduce its imports by an amount sufficient to permit Oklahoma to achieve its market aspirations. This eventuality would render the orders a plain interference with foreign commerce, which is the exclusive province of the Federal Government.

5. A buyer commanded to buy quantities in excess of his market for resale might temporarily buy for storage aboveground, but this is a temporary expedient and admittedly results in a physical and economic waste of the product which the Oklahoma Conservation Law is purposed to prevent. It also would burden the interstate commerce of the buyer with vast losses from deterioration in quality and quantity which

are admitted to result from prolonged aboveground storage.

No effort was made by appellees to meet or discount this proof of the effects of the questioned orders upon interstate and foreign commerce.

The defense was confined to a contention that "purchaser proration" gave rise to problems respecting correlative rights of producers which could be allayed by the compulsory orders to buy, and that this was a permissible exercise of appellee's regulatory powers notwithstanding consequences to interstate commerce. It was likewise contended that underground waste occurred in certain instances when production at an optimum level of efficiency was deterred by an unwilling or insufficient market. The latter contention was not sustained by proof. It was argued that these were questions of local interest, and that they should be left to the determination of the local rather than the national courts.

Suggestion of the reserved power to make exceptions to the orders was presented, but Gulf acknowledged that it was in no special circumstance from which it could claim preferment over other buyers. Its sole objections to the orders were upon constitutional grounds, which it had presented to the Commission, and which do not rest in the indulgence of appellees.

The three trial judges took three different views of the case. The prevailing view, in which two of them concurred, was that the doctrine of abstention controlled, and that the court should refuse to exercise its admitted jurisdiction, in deference to like jurisdiction of the state courts. Although the court had overruled appellee's motion to dismiss upon this ground, and proceeded to hear the case at

length upon the merits, the actual judgment of the concurring judges was that the motion previously overruled should now be sustained and the cause dismissed. The prevailing opinion makes clear that the decision is founded upon the doctrine of abstention enunciated in *Alabama Public Service Commission* v. *Southern Railway Co.*, 341 U. S. 341, and makes no finding respecting the merits of the case.

The Circuit Judge who presided at the trial filed a dissenting opinion in which the facts are found in detail, and are noted to be virtually undisputed. The dissent takes the view that the case is not within the abstention rule, that the effect of the orders upon interstate commerce is direct, substantial and unreasonably burdensome, that the questions presented are of dominant national concern, and that the orders should be enjoined as in contravention of the Commerce Clause of the Constitution.

The judgment of dismissal entered upon the concurring opinions, and this appeal resulted.

The Questions Are Substantial.

First. In a case now pending on its docket, this Court has for decision the application of the doctrine of abstention in circumstances which differ in no fundamental respect from those here present. *California Public Utilities Commission* v. *United States*, October Term, 1956, No. 447, probable jurisdiction noted December 3, 1956. In that case the issue is the propriety of a federal district court considering whether local rate regulation of shipments of governmental property casts an unreasonable burden on the federal power to support and maintain the Army and the Navy. In it, as here, the federal forum is invoked to consider if restrictions imposed by local law transcend state lines

and oppress national interests. In neither case is there resort to the federal court merely to determine if the local law oppresses local economic interests.

Second. The restrictive potential of state compulsory purchasing on imports of foreign crude, recognized by the Oklahoma Commission in issuing its orders, makes this assertion of state power of concern to the National Government itself, as well as to the entire petroleum industry and the governmental authorities of the several states. For the rate of imports of foreign crude is under constant scrutiny by the Director of the Office of Defense Mobilization, pursuant to his duty to advise the President when adjustments are required because they threaten to impair the national security. Trade Agreements Extension Act of 1955, Sec. 7, 69 Stat. 166, 19 U. S. C. (Supp. III), Sec. 1352a (b). He has not yet advised that the rate of imports imposes this threat and requires adjustment by the President. First Annual Report of the President of the United States on the Trade Agreements Program, H. R. Doc. No. 93, 85th Cong., 1st Sess. 9-10 (1957). Oil was a particular article of import which Congress had in mind when it vested this regulatory power in the President. "An expanding domestic oil industry, plus a healthy oil industry in friendly countries which help to supply the United States market, constitute basically important elements in the kind of industrial strength which contributes most to a strong national defense." S. Rep. No. 232, 84th Cong., 1st Sess. 4 (1955).

Third. The compulsory purchasing of allowables is an assertion of power heretofore unknown in regulation of the oil industry. Assigned quotas have extended "only to production and not to sales or transportation of crude oil or its products." *Champlin Refining Co.* v. *Corporation Commission of Oklahoma,* 286 U. S. 210, 235. The function

of fixing production allowables as presently known is to restrict production to the demand of the market, whether local or out-of-state. Correlative rights do not present a problem when that is done, as the market absorbs all production. Any temporary excess resulting from such isolated causes as refinery strikes or fires or pipeline breaks is stored until repair is made or is disposed of in another market. Compulsory purchasing has therefore not been needed or practiced.

The majority below does not reject these facts or the facts of Oklahoma's extensive participation in the national commerce in crude oil, appellant's exclusive participation therein in its purchasing of Oklahoma oil, the national oversupply of crude oil, the oversupply of Oklahoma crude oil, the availability of other methods of protecting correlative rights of local producers, the invitation to retaliatory orders by other states, or the desire of the Commission to coerce a greater market for Oklahoma oil. These facts, if the office of allowables is changed from the restriction of production to the compulsion of purchasing, make inevitable the disruptions and interferences with the national commerce stated in the evidence (*supra*, p. 10) and recognized as manifest truth in the opinion of the dissenting judge (App. 1, *infra*, p. 35).

These consequences are the very barriers to interstate and foreign trade and the very discriminations against out-of-state competition with local industry which this Court has always held to be the hallmark of invalidity of local regulation under the Commerce Clause. *Dean Milk Co.* v. *Madison*, 340 U. S. 349; *Hood & Sons* v. *Du Mond*, 336 U. S. 525; *Baldwin* v. *Seelig*, 294 U. S. 511; *Pennsylvania* v. *West Virginia*, 262 U. S. 553; *Oklahoma* v. *Kansas Natural*

Gas Co., 221 U. S. 229. In disregarding them, the majority below erred in a matter of critical national concern.

Fourth. None of the factors are here present which have led this Court to apply federal abstention in the past. The controversy affects national interests, not merely such local matters as intrastate railroad passenger service, *Alabama Public Service Commission* v. *Southern Railway Co.*, 341 U. S. 341, density of spacing oil wells, *Burford* v. *Sun Oil Co.*, 319 U. S. 315, allocation of oil production between flush and stripper wells, *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 310 U. S. 573, 311 U. S. 614. A real controversy, and not a synthetic case, exists. Appellant reduced its crude oil purchases in an extremity of oversupply and in spite of appellee's declaration that violators of its compulsory purchasing orders would find themselves in "serious trouble," and its power to impose penalties which cumulate at the rate of $5,000 per day.

There is no risk of federal equity interference with continuing adjustments in a state's administrative regulation of its local economy, as compulsory purchasing represents the fixed and settled policy of the Commission. That section of the allowable orders is repeated each month without variation and in stereotyped form. It is no longer supported by the finding of fact used to buttress it when it was first issued in the June 26, 1956, order. That was dropped seven months later and has not since been repeated. Nor is there judicial encroachment upon informed administrative judgment in the interpretation or application of complicated facts. The orders were originally adopted and have since been continued without the hearing of evidence. Nor was any required as the decision was one of legislative policy, not of informed administrative judgment.

The ruling of the court below eliminates doubtful questions of state law as a reason for withholding federal adjudication. For the prevailing opinion recognizes the orders to be "rationally related to express authority held by the Commission to protect correlative rights." The dissenting judge expressly recognizes that no doubtful questions of state law are involved. The majority's statement that compulsory purchasing "involves local law" stems from its erroneous conclusion that as a matter of federal law "the subject matter of the order is of dominant local character"——not from its questioning of the Commission's powers under local law.

A more adequate determination of the commerce clause question would not result from a proceeding in the Oklahoma Corporation Commission or the Oklahoma Supreme Court, the only state tribunals with power to act. In them there might well be a decision on the pleadings with important facts appearing only by inference. This occurred in the decision by the Kansas Supreme Court which was the sequel to the remission ordered in the opinion of the federal court in Kansas on which the majority below relied. *Kansas, ex rel. Fatzer,* v. *Sinclair Pipe Line Co.,* 304 P. 2d 930 (Kan., 1956). If that happened here, an appeal to this Court as the final arbiter of commerce clause questions would not bring before it the "relevant factual material which will afford a sure basis for an informed judgment." *Southern Pacific Co.* v. *Arizona,* 325 U. S. 761, 770. Such material is now in this record. Even if a judgment on the pleadings did not occur, appellant could do no more than present to the State Commission the same evidence presented to the federal court, obtain the adverse ruling which is a foregone conclusion, and then appeal to the Oklahoma Supreme Court. The delay of this procedure would appear

not required when the federal court may decide questions of the national commerce from the face of the orders and the undisputed facts. *Public Utilities Commission of Ohio* v. *United Fuel Gas Co.*, 317 U. S. 456; *Toomer* v. *Witsell*, 334 U. S. 385.

We believe that this Court has jurisdiction and that the substantial questions are presented.

Respectfully submitted,

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April 1957.

Appendix.

Appendix 1.

(Filed December 19, 1956; R. Lee Jenkins, Clerk, by Giles K. Ratcliffe, Deputy.)

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA.

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Civil Action No. 7147

Gulf Oil Corporation, a corporation, Plaintiff,

vs.

Corporation Commission of The State of Oklahoma; Ray C. Jones, Wilburn Cartwright, and Harold Freeman, as Members of said Corporation Commission and as Individuals, Defendants.

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Before Murrah, Circuit Judge, and Chandler and Wallace, District Judges.

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Wallace, District Judge.

The plaintiff, Gulf Oil Corporation, a Pennsylvania corporation (herein referred to as "Gulf") brings this action against the Corporation Commission of the State of Oklahoma, Ray C. Jones, Wilburn Cartwright, and Harold Freeman, as members of said Corporation Commission and as Individuals (herein referred to as "Commission") to enjoin an order entered by the Commission on or about June 29, 1956, requiring purchasers of crude oil produced in Oklahoma to purchase the full allowable fixed by the Commission for oil wells from which the purchasers take oil, unless the Commission specifically grants permission to take a lesser amount.[1] At the time of hearing the court

1. The contested order is the last provision of the oil allowable order for the months of July-August, 1956, entered on or about June 29, 1956, which provides: "It is therefore ordered by the Corporation Commission of Oklahoma as follows: * * * 26. That all takers and/or purchasers of crude oil in Oklahoma shall take the full amount of oil allowed by this order unless relieved therefrom by this Commission after notice and hearing as provided by law."

took under advisement defendant's motion to dismiss; and for the convenience of the parties permitted the introduction of evidence going toward the merits of the case.

The complainant urges that this court has jurisdiction by virtue of complete diversity of citizenship and because of requisite amount;[2] and, has called upon this three-judge court inasmuch as injunctive relief against the enforcement of a state law is requested.[3] The defendants conceded that the *bare* jurisdictional requirements of the relied upon statutes exist, but challenge this court's right to consider this cause on its merits due to plaintiff's failure to exhaust all administrative remedies and further because of the lack of *equity* jurisdiction.

There is no substance to defendants' assertion that Gulf has failed to exhaust all necessary administrative remedies prior to the filing of this complaint. Admittedly, Gulf has neither specifically requested the Commission to grant a special exemption as available under the terms of the controverted Paragraph 26 of the Market Demand Order, nor taken a direct appeal from this order of the Commission to the State Supreme Court. However, no such special request by Gulf was needed to exhaust its administrative remedy. Although the controverted order contains a provision that exemptions from the order's terms may be obtained, Gulf has no special cause to claim exemption other than the fact that it is an interstate purchaser. And, on August 21, 1956, at a Commission hearing, Gulf pointed out this interstate condition and requested that purchasers falling in such category be exempted as a class. Subsequently, the order was issued omitting any such exception. Thus, the Commission unmistakably indicated it intended to affect interstate purchasers as well as local purchasers by such order, and, Gulf claims no other special right entitling it to relief.

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2. See 28 U. S. C. A., Sec. 1331.
3. See 28 U. S. C. A., Sec. 2281.

The Oklahoma law is amply clear that a party aggrieved has the right to directly appeal to the Oklahoma Supreme Court from a contested order, such as the one in view, without first moving for a new trial or pursuing other special provisions for relief;[4] and, that such an appeal is judicial in character and not administrative.[5] Thus, in those cases wherein the federal court does have jurisdiction no claim can properly lie that the administrative remedy has not been exhausted, since any consideration by the Oklahoma court is at such juncture *judicial* and not administrative in nature.[6]

We now turn to the more serious question of whether *equity* jurisdiction lies.

The defendants urge that the instant case falls clearly within the purview of that doctrine which requires deference by the federal judiciary to local forums thus granting local processes the opportunity to resolve the controversy without a needless calling into play of federal constitutional problems.[7] Gulf, although recognizing the doctrine of abstention asserts that the case before us is not one calling for the application of such doctrine inasmuch as the contested order shows on its face that judged by federal constitutional principles the order invades the exclusive province of federal authority.[8] Specifically, Gulf argues that the Commission has attempted to regulate the volume of

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4. See Holz Bierlein v. State, 172 P. 2d 1007 (Okla., 1946); Republic Natural Gas Company v. State, 180 P. 2d 1009 (Okla., 1947); and Mee v. Corporation Commission, 293 P. 2d 593 (Okla., 1956).

5. See Sterling Refining Company, et al., v. Walker, et al., 25 P. 2d 313 (Okla., 1933); and, Art. IX, Sec. 20, Okla. Const.

6. Bacon v. Rutland R. R. Co., 232 U. S. 134 (1914).

7. This doctrine of "abstention" for equitable reasons was applied in Alabama Public Service Comm. v. Southern Ry. Co., 341 U. S. 341 (1951). Also, see Public Service Comm. of Utah v. Wycoff Co., Inc., 344 U. S. 237 (1952); and Railroad Commission of Texas v. Pullman Co., 312 U. S. 496 (1946).

8. See Public Utilities Commission of Ohio v. United Fuel Gas, 317 U. S. 456 (1943).

crude oil purchases in interstate commerce contrary to the Interstate Commerce Clause of the Constitution and the Due Process Clause of the Fourteenth Amendment; and, that the Commission's attempted action is not merely the invalid exercise of an admitted power, but is an attempted assertion of authority expressly and wholly denied by federal law.

In urging equity jurisdiction Gulf principally relies upon the cases of *Texoma Natural Gas Co.* v. *Railroad Commission of Texas*,[9] and *Thompson* v. *Consolidated Gas Utilities Corporation*[10] In both these cases three-judge courts granted injunctive relief against the enforcement of local orders. In the *Texoma Natural Gas Company* case the court held that the Texas Act requiring both common and private pipe line carriers to purchase gas without discrimination between producers was an unconstitutional taking of private property for public use without just compensation; and, that in addition there was an unconstitutional interference with and burden upon interstate commerce. And, in the *Thompson* case, the law under attack was found constitutionally deficient inasmuch as it was enacted solely to compel private pipe line owners to furnish a market to those who had no pipe line connections. However, two pivotal features distinguish the *Texoma Natural Gas Company* case from the one before us. There, the plaintiffs were *private* pipe line carriers who were solely devoted to serving their own privately owned wells and had not dedicated their property to public use. Moreover, while the litigated act purported to conserve oil and gas as natural resources of the state, it was conceded that the pipe line operations therein did not result in waste. And, in the *Thompson* case it was obvious from the face of the order that the exercised authority was neither related to the prevention of waste nor the protection of correlative rights in connection with undue drainage.

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9. 52 F. 2d 750 (D. C. Tex., 1932).

10. 300 U. S. 55 (1936).

In the instant case, Gulf, under Oklahoma law, is a common carrier and common purchaser and is under a public duty, as any other common carrier, to furnish adequate facilities.[11] It is in relation to this duty along with the state's legitimate interest in ratable taking (and conservation) that the countenance of the questioned order must be judged.

Unquestionably, the transactions covered by the controverted order bear some real relationship to interstate commerce. However, such does not alter the fact that the subject matter of this order is of a dominant local character and involves local law.[12] Significantly local authorities, in the absence of a clearly defined pre-emption to the federal government, have the right to affect interstate commerce in the absence of placing an unreasonable burden thereon; and, this order cannot be deemed invalid on its face merely because interstate commerce is touched.[13] Moreover, the doctrine of abstention is not precluded from application merely because the constitutional issue arises in connection with the commerce clause.[14] As recognized

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11. See in particular 52 Okla. Stats., Sec. 86.

12. It is apparent that to prevent discriminatory and inequitable taking a state must be able to have some regulation over the taking along with the production, and have some control over the taker as well as the operator. And, as observed in the dissenting opinion in Republic Natural Gas Co. v. State, 334 U. S. 62, 95 (1947), the authority of the state does not spring exclusively from the interest to preserve the natural resources but "It stems rather from the basic aim and authority of any government which seeks to protect the rights of its citizens and to secure a just accommodation of them when they clash."

13. "The Commerce Clause gives to the Congress a power over interstate commerce which is both paramount and broad in scope. But due regard for state legislative functions has long required that this power be treated as not exclusive. (Citing authority.) * * * It is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce. * * *" Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U. S. 179, 186 (1950).

14. Railroad Commission of Texas v. Pullman Company, fn. 7, supra; Natural Gas Pipeline Company v. Slattery, 302 U. S. 300 (1937); Spector Motor Service v. McLaughlin, 323 U. S. 101 (1944).

in Gulf's own brief, for this court to exercise its jurisdiction it must appear from the face of the contested order itself that there has been an attempt by local officials to exercise a federally preempted power, as distinguished from a mere invalid or abusive use of legally possessed state authority. And, the mere statemeent of this test seems conclusive as to the need of this court to defer to the local forums in the instant suit. In this case it is impossible to separate the claims of constitutional infringement from questions involving interpretation of Oklahoma law; and, the order even if ultimately held invalid under the Oklahoma law, by all reasonable standards is rationally related to express authority held by the Commission to protect correlative rights, and cannot be deemed merely an attempt to usurp authority in a field exclusively delegated to the federal government.[15]

The most recent application of the doctrine of abstention, embracing facts analogous to the instant case, is found in two companion Kansas cases, as yet unreported.[16] In these cases Sinclair Pipe Line Company and Sinclair Crude Oil Company asked the Federal District Court of Kansas to pass upon the constitutionality of an order issued by the Kansas Corporation Commission prohibiting the sale of a portion of an interstate pipe line system. In urging jurisdiction the plaintiffs therein argued that the Kansas Conservation Law did not pretend to confer authority upon the Commission to regulate the sale of interstate pipe line systems, or any parts thereof, and that if the local law so attempted it was in conflict with the Federal Constitution.

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15. Thus distinguish our suit from Public Utilities Commission of Ohio v. United Fuel Gas Co., fn. 8, supra, at 469, 483, wherein the court ruled that "the orders of the State Commission are on their face plainly invalid" because in conflict with the federal natural gas act; and "no state court ruling on local law could settle the federal questions that necessarily remain."

16. These cases are Sinclair Pipe Line Company v. Snyder, et al., No. T-1272 (D. C. Kans., 1956); and, Sinclair Crude Oil Company v. State Corporation Commission of The State of Kansas, et al., No. T-1273 (D. C. Kans., 1956).

However, even in the face of such allegations the three-judge court of Kansas refused to accept jurisdiction inasmuch as a "definitive ruling on the state law might make unnecessary the determination of the federal constitutional questions"; and the court quoted from *Public Utilities Commission* v. *United Fuel Gas Company* wherein the Supreme Court noted that "Where the disposition of a doubtful question of local law might terminate the entire controversy and thus make it unnecessary to decide a substantial constitutional question, considerations of equity justify a rule of abstention."[17] In addition, the Kansas court recognized that the Kansas procedure provided a speedy method of obtaining review.[18]

The logic of the *Sinclair* cases, is equally applicable here. A speedy method of review is available through Oklahoma forums;[19] and, a resort to such avenues may entirely eliminate the grave constitutional issues now asserted. Obviously, if the state authorities do not properly protect rights of the plaintiff springing from the Federal Constitution, Gulf can assert such rights directly to the United States Supreme Court from the Supreme Court of Oklahoma.

The defendants' motion to dismiss is hereby sustained.

Dated this 19 day of December, 1956.

/s/ W. R. Wallace,

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W. R. Wallace.

United States District Judge.

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17. Fn. 8, supra, at 463.

18. Cf. language of Burford v. Sun Oil Company, 319 U. S. 315, 325 (1943).

19. Under 52 Okla. Stats., Sec. 112, any person affected by a Commission order may at any time apply for repeal, amendment, or modification; and, such application is to be given expeditious hearing. If the requested relief is denied, then a direct appeal lies to the Oklahoma Supreme Court.

CHANDLER, concurring.

I concur in the result reached by Judge Wallace. However, I am of the opinion that Gulf has not exhausted all necessary administrative remedies. It has not applied for relief under Paragraph 26 of the Corporation Commission order. For that reason the complaint should be dismissed.

Had all administrative remedies been exhausted without success, I agree with Judge Wallace that this Court should not assume equity jurisdiction. Gulf has not shown that the Oklahoma procedure for review of the contested order is in any way inadequate to preserve for ultimate review by the Supreme Court of the United States any federal question arising out of the order. As a matter of fact adequate and speedy remedy would be available by appeal to the Supreme Court of Oklahoma and thence to the Supreme Court of the United States. The power of a court of equity to act being discretionary, the controlling principle announced in *Alabama Public Service Commission* v. *Southern Railway Company*, 341 U. S. 341, 95 L. ed. 1002, places upon us a duty to abstain under these circumstances.

MURRAH, dissenting.

At the outset, let me acknowledge and embrace the doctrine of abstention, applicable in cases of this kind, to the effect that a federal court will refrain from exercising its equity jurisdiction to enjoin the enforcement or operation of a state statute or a regulatory order of a state tribunal, to vouchsafe the due process or equal protection guaranties of the Fourteenth Amendment.

The doctrine has been readily applied to challenged state statutes and regulatory orders in the exercise of the state police power to regulate the exploration, production and marketing of petroleum products found and produced within the boundaries of a state. *Burford* v. *Sun Oil Co.*, 319 U. S. 315; *Champlin Refining Co.* v. *Okla. Corp. Commission*, 286 U. S. 210; *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 310 U. S. 573; *Railroad Commis-*

sion of Texas v. *Rowan & Nichols Oil Co.*, 311 U. S. 570; *Natural Gas Co.* v. *Slattery*, 302 U. S. 300. These are matters deemed primarily of internal concern within the peculiar competence of state regulatory bodies with adequate recourse to the state courts and to the Supreme Court for redress of asserted deprivation of due process and equal protection of the laws.

The doctrine reached full fruition and vitality in *Alabama Commission* v. *Southern Railroad Co.*, 341 U. S. 341, the court saying, "Equitable relief may be granted only when the District Court, in its sound discretion exercised with the 'scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts,' is convinced that the asserted federal right cannot be preserved except by granting the 'extraordinary relief of an injunction in the federal courts'." Indeed, the latter case is said to have the practical effect of foreclosing federal equity jurisdiction to vouchsafe economic due process or equal protection "if a plaintiff can be sent to a state court to challenge an agency order." See Mr. Justice Frankfurter dissenting, p. 356.

But that notion was apparently repudiated in *Doud* v. *Hodge*, 350 U. S. 485, the court denying that it had ever "held that a district court is without jurisdiction to entertain a prayer for an injunction restraining the enforcement of a state statute on the grounds of alleged repugnancy to the Federal Constitution simply because the state courts had not yet rendered a clear or definitive decision as to the meaning or federal constitutionality of the statute." For that matter, three-judge federal equity jurisdiction has always been deemed a ready forum for the asserted deprivation of civil rights under the Fourteenth Amendment. *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624; *Brown* v. *Board of Education*, 347 U. S. 483, and related cases; *McLaurin* v. *Board of Regents*, 339 U. S. 637; *Stapleton* v. *Mitchell*, 60 Fed. Supp. 51. In the determination of the appropriateness of the exercise of federal equity

jurisdiction, the courts seem, however, to recognize a clear distinction between economic and human due process and equal protection. "Much of the vagueness of the due process clause disappears when the specific prohibitions of the First becomes its standard." *West Virginia State Board of Education* v. *Barnette, supra.*

If only due process and equal protection were involved, I should not hesitate to relegate the plaintiff to its remedy in the state court, for adequate judicial recourse from the challenged order to the Supreme Court of Oklahoma is provided by the Constitution and laws of Oklahoma. Art. IX, Sec. 20, Constitution of Oklahoma, 52 O. S. A., Secs. 111, 113. But, more is involved than asserted denial of due process of law. The principal complaint of Gulf is that the enforcement of the challenged order will immediately cast a discriminatory burden upon interstate commerce. It was this consideration which prompted us to overrule the motion to dismiss and hear evidence relevant to that issue.

Three-judge equity jurisdiction was cautiously sustained in *Public Utilities Commission* v. *Gas Company,* 317 U. S. 456, where the challenged Commission order asserted jurisdiction to fix the rates for natural gas transported and sold in interstate commerce. After resolving preliminary questions of state law, the court rejected the Commission's power to establish reasonable rates for the gas sold in interstate commerce on the grounds that the federal government had preempted the field by the Natural Gas Act of 1938, 52 Stat. 821, 15 U. S. C. 717. The court was careful, however, to point out that the Gas Company had exhausted all administrative remedies available to it before bringing the suit. And, it was also careful to note the absence of the necessity for considering whether the commerce clause of its own force invalidated the Commission's assertion of jurisdiction over the interstate gas rates.

Even in the absence of preempting federal legislation, three-judge equity jurisdiction was deemed proper to vindicate the supremacy of the interstate commerce clause as

against state discrimination in *Baldwin* v. *G. A. Seelig*, 294 U. S. 511. And see also *Foster Fountain Packing Co.* v. *Haydel*, 278 U. S. 1; *Lemke* v. *Farmers Grain Co*, 258 U. S. 50.

To be sure, the exhaustion of all administrative remedies is requisite to the exercise of collateral jurisdiction (*Natural Gas Co.* v. *Slattery, supra*), and the Commission says that Gulf has not done so.

Paragaph 26 of the challenged order provides in effect that all takers and purchasers shall take the full allowable production "unless relieved" by the Commission after notice and hearing. Paragraph 40 of the order provides in part that "all takers and purchasers shall take the amount fixed in this order unless in an extreme emergency an application is filed for relief from that provision and permission is granted by the Corporation Commission to take less than the amount provided by this order, after notice and hearing * * *." Conceivably, the Commission might relieve Gulf of the requirements of the order upon a showing of an "extreme emergency." But, Gulf says that it has no grounds for exception; that no unusual circumstances exist to justify relief from the order. It is said to stand on the same footing with all other takers and purchasers with no grounds for relief except its inability to comply with the order. And this, the Commission says, is legally insufficient. These representations were made to the Commission and were before it when the challenged order was made. The only recourse to the Commission would be in the nature of a petition for rehearing and I do not understand such to be an administrative prerequisite to judicial inquiry. *Republic Natural Gas Co.* v. *State*, 180 P. 2d 1009. It is also noteworthy that no questions of state law are involved, the construction and interpretation of which might obviate the necessity for decision on the constitutional question. Cf. *Railroad Commission* v. *Pullman Co.*, 312 U. S. 496; *Thompson* v. *Magnolia Petr. Co.*, 309 U. S. 478; *Phillips Petr. Co.* v. *Jones*, (Western Dist. of Okla.—Civil 6794) .. Fed.

Supp. ...; *Sinclair Pipe Line Co.* v. *Harry Snyder, Jr., et al.,* (Dist. of Kansas, No. T-1272) and *Sinclair Crude Oil Co.* v. *State Corporation Commission, et al.,* (Dist. of Kansas, No. T-1273) ... Fed. Supp. ....

Gulf does not challenge the power of the Commission under state law. The gravamen of its complaint is that the order is proscribed by the supremacy of the commerce clause of the Federal Constitution. We are thus brought squarely to the question whether the commerce clause of the Constitution by its own naked force prohibits the challenged order. The resolution of that question depends on federal law, and while it may have been preferable to test the constitutionality of the order of a state agency first in the state courts with ultimate recourse to the supreme judge of federal law, the case is rightly here by constitutional choice of forums, and I do not think it would be in the public interest to send the plaintiff away without day.

We start with the proposition, about which there can be no dispute, namely, that the State of Oklahoma, through its Corporation Commission, is clothed with almost plenary power to promulgate measures for the conservation of its natural resources, and particularly the production, transportation and marketing of petroleum products. That power and authority, first vitalized in *Ohio Oil Co.* v. *Indiana,* 177 U. S. 190, has been reaffirmed too many times to admit of debate. We know that the due process and equal protection clauses of the Constitution impose only tenuous restructions upon the exercise of that power, and federal courts will rarely interfere on that ground where state remedies are provided. And see *Burford* v. *Sun Oil Co.,* 319 U. S. 315, and cases cited.

It is also noteworthy that a state may, consistently with the commerce clause of the Constitution, regulate its internal economy, including oil industry, even though such regulations have some substantial bearing on interstate commerce. It is now well settled that "a state may regulate matters of local concern over which federal authority has

not been exercised, even though the regulation has some impact on interstate commerce. * * * The only requirements consistently recognized have been that the regulation not discriminate against or place an embargo on interstate commerce, that it safeguards an obvious state interest, and that the local interest at stake outweigh whatever national interest there might be in the prevention of state restrictions." *Cities Service Co.* v. *Peerless Co.*, 340 U. S. 179, and cases cited. See also *Milk Control Board* v. *Isenberg Farm Products*, 306 U. S. 346; *Parker* v. *Brown*, 317 U. S. 341; *Panhandle Eastern Pipe Line Co.* v. *Michigan Public Service Commission*, 341 U. S. 329.

Since *Cooley* v. *Board of Wardens*, 12 How 299, first establishing the so called "balancing of interest" principle in 1852, courts have been struggling with the perplexing problem of making pragmatic adjustments between competing local and national interests under the commerce clause. All agree to the proposition that the states are free to deal with the diverse activities primarily affecting local affairs so long as they do not reach out to regulate interstate commerce to the state's own economic advantages and to the detriment of the national interest. The contrariety comes from the divergence of views in each case concerning the dominant interest.

The principle is well illustrated by a unanimous court in *Baldwin* v. *G. A. Seelig, supra.* The philosophical cleavage is graphically illustrated in *Hood & Sons* v. *DuMond*, 336 U. S. 525, where the court, while agreeing upon the underlying principle, sharply disagreed upon its factual application. There, the bare majority, after threading the principle through case after case, struck a health and safety measure of a New York administrative agency having for its purpose the protection of local milk markets against out-of-state competition despite the avowed health and safety motives. The court thought the obvious effect of the order was to foster economic rivalries and reprisals among states competing for the metropolitan milk market. One sure conclusion emerges from the adjudicated cases, that is,

whatever stand we take, we shall not stand alone. With these basic principles in mind, let us analyze the facts.

Gulf Oil Corporation produces oil in all or most of the mid continent states, including Oklahoma. It purchases oil from 4882 producing leases, 1668 of which are in Oklahoma. It also repurchases oil gathered by other takers from other producing leases in the same area. Some of the repurchases are on a reciprocal contract letter basis, under which Gulf purchases stated amounts of oil in Oklahoma, and sells the same amount of oil to another purchaser in another state or the same state in order to facilitate economical transportation to market. All of the oil purchased by Gulf is transported by pipe line to its five refineries at Port Arthur, Texas, Philadelphia, Pennsylvania, New York, New York, Cincinnati, Ohio, and Toledo, Ohio. All of the oil purchased in Oklahoma, including repurchases, is received immediately by the Gulf Refining Company, a wholly owned subsidiary, for transportation through its pipe line to its refineries near Cincinnati and Toledo. None of the oil is transported for delivery to Oklahoma points. Gulf Refining Company operates its pipe line system as an interstate pipe line common carrier of oil for oil for hire, subject to the Federal Interstate Commerce Act, 49 U.S.C., Sec. 1, *et seq.*, and the rules and regulations of the Federal Interstate Commerce Commission issued pursuant thereto, 49 C. F. R., Parts 20, 120, 141, 142, 148, 155, 156, 158, 159, 160. All transportation of crude oil through this pipe line system to the Toledo and Cincinnati refineries is pursuant to tariffs filed by Gulf Refining Company with the Federal Interstate Commerce Commission, and is at the rates and subject to the rules and regulations set out in such tariffs.

Some of the oil purchased in Texas, New Mexico and Illinois is also transported immediately to the same refineries. No crude purchased from any other states or countries was received at these refineries during the period in question and the Ohio refineries are the only presently available markets for Oklahoma crude purchased or repur-

chased by Gulf. These Ohio refineries have been the only market for Oklahoma crude purchased by Gulf since 1952. Since that date, Gulf's purchases for those refineries have increased from 15,987 barrels to 38,348 barrels per day. The total purchases for the same refineries for the same date have increased from 66,924 barrels to 78,068 barrels per day. It is necessary to blend the Oklahoma crude with other crude of different gravity in order to bring it up to its optimum refining qualities. During all of the time in question, Gulf's purchases of Oklahoma crude have conformed to the production allowables fixed by the Oklahoma Corporation Commission, as well as the allowables fixed by the comparable commissions for the states of Texas, New Mexico, Louisiana and Kansas. And compliance with the orders of the Commission applicable to July, August, September and October 1956 results in the purchase of between 24,000 and 26,000 barrels of oil per day. This is in excess of the market demand for Oklahoma crude at Gulf's only market and for some months has resulted in excessive top ground storage of crude in Gulf's facilities along the pipe line system.

Furthermore, the undisputed proof shows a current excess of supply over demand for crude oil nationally. There was expert and unchallenged testimony to the effect that 150,000,000 barrels of gasoline is the desirable amount of reserve stock, and that there is or was at the time of the hearing approximately 170,000,000 barrels of refined stock in top ground storage. There was undisputed expert proof to the effect that 250,000,000 barrels of crude oil is the desirable top ground storage to meet refinery needs and to take care of anticipated contingencies; that there is now or was at the time of the hearing approximately 280,000,000 barrels of oil in top ground storage. This top ground storage of refined and crude stock is shown to be excessive and depressive upon the national market.

The net result of this evidence is that the several producing states are now competing for the limited market

for crude oil. The crude oil production from prorated wells greatly affects the economy of the state, both private enterprise which produces it, and the State which taxes it. Oklahoma's market for the crude oil purchased and transported by Gulf is fixed and limited. It must compete with other states for the same market. When, in June, 1956, the Corporation Commission came to determine market demand for the purpose of fixing allowables, it was informed by Gulf in response to the conventional invitation to nominate the amount of oil it would take that "unless the Commission takes action to reduce our runs at least to 19,500 barrels per day, we shall be compelled to take action ourselves. Assuming no action by the Commission effective seven a. m. July 1, 1956, our lease purchase in Oklahoma will be reduced to 75% of our actual average purchases for the month of May, 1956. The effect of this will be to reduce our actual runs to 19,500 barrels per day during July 1956, the amount we have nominated and which we can handle." In the face of this nomination and representation, the Corporation Commission's order, effective July 1, 1956, for August, September and October 1956 fixed the allowables based upon Gulf's purchases for prior months.

The avowed purpose and effect of the challenged order is to prevent physical and economic waste, and it is argued that if the producers are able to sell only a part of the oil they can produce under the Commission's market demand orders, the result is economic waste, underground waste and surface waste; that marginal wells are rendered unprofitable and recoverable reserves lost; salt water wells and waterflood projects suffer injury, and perhaps destruction; and that other wells can be produced only at greater expense. It is said that producers must provide their own wasteful storage facilities at the lease or forever lose additional production; that underages are never caught up; the surplus oil must be disposed of at reduced prices; and the state suffers in loss of revenue from the impact on one of its most vital industries.

The Corporation Commission is undoubtedly empowered to fix a reasonable market demand based upon statutory factors, and it is not bound by the nominations of the takers and purchasers. See 52 O. S. A., Sec. 110. *Peppers Refining Co.* v. *Corporation Commission,* 179 P. 2d 899. But it is true, as the Commission's attorneys say, that "market demand for Oklahoma oil depends upon the market demand of the nation, and in turn of the world-wide supply and demand for petroleum and its products." In the exercise of its police power to secure co-equal and ratable taking between and within common sources of supply, the Commission may determine the reasonable market demand, but it cannot compel a purchaser to take oil for which it has no market if the result is to prejudice commerce in oil from other states competing for the same market.

There is no contention that Gulf will not take its reduced purchases ratably among its sources of supply, and certainly there can be no contention that the waste and deterioration will be any greater in the tanks of the producers than those of the purchasers. There was expert testimony to the effect that top ground storage of gasoline and crude results in qualitative and quantitative deterioration and waste, and that it creates other hazards which ought to be prevented. The net result of all of this is a coercive, even though laudable, attempt to preserve Oklahoma's market for its crude oil in competition with other states. The undisputed evidence is that if Gulf is required to take the full allowable, it must do one or all of four things. First, it may withdraw completely from the state with obvious disastrous consequences; second, reduce the number of leases from which it purchases in Oklahoma; third, it may curtail its repurchases of Oklahoma crude with consequent adverse impact upon free interstate trade in oil; or, fourth, it may curtail its interstate purchases elsewhere in order to accommodate the purchase of Oklahoma allowables. To me, any alternative is to impose a restriction upon interstate commerce for the economic advantage of the State of Oklahoma. If Oklahoma can enforce its order to take more oil

for interstate markets than the market demand therefor, other competing states can do likewise with chaotic and disruptive consequences to interstate commerce.

Our facts are not ruled by *Cities Service Co.* v. *Peerless Co., supra,* where the state fixed the price of natural gas sold in interstate commerce to prevent economic and physical waste. The impact of the order served a legitimate local interest without disruptive effect on interstate commerce. Nor is it like *Parker* v. *Brown, supra; Milk Control Board* v. *Isenberg Farm Products, supra;* or *Panhandle Eastern Pipeline Co.* v. *Michigan Public Service Commission, supra,* where the local interest was dominant and the effect upon interstate commerce nondiscriminatory. In our case, the national interest is dominant. *Like H. P. Hood & Sons* v. *DuMond, supra; Baldwin* v. *G. A. Seelig, supra; Dean Milk Co.* v. *City of Madison,* 340 U. S. 349; and *Missouri* v. *Kansas Gas Co.,* 265 U. S. 298, free and nondiscriminatory trade in interstate commerce is at stake. The constitutional limitations on the police power of the state to regulate the interstate transportation of petroleum products was very recently recognized in the Supreme Court of Kansas, the court pointing out that where the national interest is dominant, the state is powerless to regulate, even in the absence of federal legislation. See *State of Kansas, ex rel. Harold R. Fatzer, et al.,* v. *Sinclair Pipe Line Comm.,* decided Dec. 10, 1956, ... P. 2d .... I think these circumstances justify the exercise of the extraordinary federal equity remedy.

Appendix 2.

UNITED STATES DICTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 7147-C

Gulf Oil Corporation, a Corporation, Plaintiff,

vs.

Corporation Commission of the State of Oklahoma, Ray C. Jones, Wilburn Cartwright, and Harold Freeman, as Members of said Corporation Commission and as Individuals, Defendants.

JUDGMENT.

This action came on to be tried before the Court, and the evidence of the parties having been heard and the Court having filed written opinions herein on December 19, 1956, in which it is ordered that Defendants' Motion to Dismiss be sustained, it is

Ordered, Adjudged and Decreed that Plaintiff take nothing by its Complaint and that this action be and it hereby is dismissed at Plaintiff's cost.

Dated this 19th day of December, 1956.

/s/ Alfred P. Murrah,
Alfred P. Murrah, Circuit Judge.

/s/ Stephen S. Chandler, Jr.,
Stephen S. Chandler, Jr., District Judge.

/s/ W. R. Wallace,
W. R. Wallace, District Judge.

Form Approved:

/s/ James B. Diggs, For Plaintiff.

/s/ Charles R. Nesbitt, For Defendants.

FILED February 14, 1957. R. Lee Jenkins, Clerk, U. S. District Court, by /s/ Mary Bassler, Deputy.

Appendix 3.

Oklahoma Statutes 1951, Title 52, Secs. 51-66, incl.

Chapter 2—OIL PIPE LINES.

Sec. 51. *Oil companies must comply with statute—"Petroleum" defined.*—Every corporation, joint stock company, partnership or other person, exercising or claiming the right to carry or transport crude oil or petroleum, or any of the products thereof, by or though pipe lines, for hire or otherwise, or exercising or claiming the right to engage in the business of producing crude oil or petroleum, or of refining it, or manufacturing any of the products thereof, or of storing crude oil or petroleum produced by it, or any other person, or engaging in the business of buying, selling or dealing in crude oil or petroleum, within the limits of this State, shall not have or possess the right to conduct or engage in said business or operations, in whole or in part, as above described, or have or possess the right to locate, maintain, or operate the necessary pipe lines, fixtures and equipment thereunto belonging, or used in connection therewith, concerning the said business of carrying or transporting crude oil or petroleum as aforesaid, on, over, along, across, through, in or under any present or future highway, or part thereof, within this State, or have or possess the right of eminent domain, or any other rights, concerning said business or operations, in whole or in part, except as authorized by and subject to the provisions of this Article, and except such rights as may already exist which are valid, vested, and incapable of revocation by any law of this State or of the United States the word "petroleum" as used herein means all crude oil and its manufactured products, not including natural gas. R. L. 1910, Sec. 4304.

Sec. 52. *Right of way.*—For the purpose of acquiring necessary right of way, every such person is hereby granted the right of condemnation by eminent domain, and the use of the highways in this State, for the purpose of transport-

ing petroleum by pipe lines, and the location, laying, construction, maintaining and operation thereof. (R. L. 1910, Sec. 4305.

Sec. 53. *Foreign corporations.*—Corporations of other States or Territories, or of the United States, otherwise admissible to do business in this State, may get the benefit of this Article, upon compliance with the laws and Constitution of this State, including the provisions of Section 31, of Article 9, of the Constitution, but until such compliance they shall have no rights in, on or under the highways. R. L. 1910, Sec. 4306.

Sec. 54. *Common purchasers of oil—Required to purchase—Discrimination prohibited.*—Every corporation, joint stock company, partnership or other person, claiming or exercising the right to carry or transport crude oil or petroleum or any of the products thereof, by pipe line for hire, or otherwise, within the limits of this State, as allowed by, and upon compliance with the requirements of this Article, as owner, lessee, licensee, or by virtue of any other right or claim, which is engaged in the business of purchasing crude oil or petroleum therein, shall be deemed a common purchaser thereof, and shall purchase all of the petroleum in the vicinity of, or which may be reasonably reached by its pipe lines, or gathering branches, without discrimination in favor of one producer or one person as against another, and shall fully perform all the duties of a common purchaser; but if it shall be unable to perform the same, or shall be legally excusable from purchasing and transporting all of the petroleum produced, then it shall purchase and transport petroleum from each person and producer ratably, in proprotion to the average daily production, and such common purchasers are hereby expressly prohibited from discriminating in price or amount for like grades of oil, or facilities as between producers or persons; and in the event such purchaser is likewise a producer, it is hereby prohibited from discriminating in favor of its own production, or storage, or production or storage in which it may be interest-

ed, directly or indirectly in whole or in part, and its own production and storage shall be treated as that of any other person or producer. R. L. 1910, Sec. 4307.

Sec. 55. *Chapter inapplicable to businesses not of public consequence.*—All persons, firms, associations, and corporations are exempt from the provisions of this Article, where the nature and extent of their business are such that the public needs no use in the same, and the conduct of the same is not a matter of public consequence, and for this purpose the district courts of the State and the corporation commission are vested with jurisdiction to determine such exemptions in any action or proceeding properly before them, as provided in this article. R. L. 1910, Sec. 4308.

Sec. 56. *Oil carriers are common carriers—Discrimination prohibited.*—Every corporation, joint stock company, partnership or person, engaged in the business of carrying or transporting crude oil or petroleum or any of the products thereof for hire or otherwise, by pipe line, within this State, and by virtue of and in conformity to, any valid law incapable of revocation by any laws of this State or of the United States, or by virtue of and in conformity to the provisions of this Article, shall be deemed a common carrier thereof as at common law, and no such common carrier shall allow or be guilty of any unjust or unlawful discrimination, directly or indirectly, in favor of the carriage, transportation, storage or delivery of any crude, stock or storage oil, or any products thereof, in its possession or control, or in which it may be interested, directly or indirectly. R. L. 1910, Sec. 4309.

Sec. 57. *Oil carriers not to be interested in producing.*—It shall be unlawful for any corporation, joint stock company, partnership or person, engaged in the business of carrying or transporting crude oil or petroleum, or any of the products thereof, for hire or otherwise, within the limits of this Article, and not becoming a common purchaser as defined by, and accepting the provisions of this Article, to

own or operate, directly or indirectly, any oil well, oil leases or oil holdings or interests in this State, and each of said corporations, joint stock companies, partnerships or persons, shall divest themselves of all legal or equitable ownership, interest or control, directly or indirectly, in oil wells, oil leases or oil holdings, or interests in this State. R. L. 1910, Sec. 4310.

Sec. 58. *Acceptance of laws and plats to be filed.*—Before any corporation, joint stock company, partnership or person, shall have, possess, enjoy or exercise the right of eminent domain, right of way, right to locate, maintain or operate pipe lines, fixtures or equipment thereunto belonging, or used in connection therewith, as authorized by the provisions of this Article, or shall have, possess, enjoy or exercise any right (the word "right" in this connection being used in its most comprehensive legal sense) conferred by this Article, every such corporation, joint stock company, partnership or person shall file in the office of the Corporation Commission a proper and explicit authorized acceptance of the provisions of this Article, and the Constitution of this State, and in cases of pipe lines a plat showing in detail the points within this State between which, and the route along which, the trunk lines are proposed to be constructed, the intended size and capacity thereof, and the location and capacity of all pumping stations, gate valves, check valves and connections and appliances of all kinds used, or to be used, on said trunk lines; and upon demand of the Corporation Commission the proper party or parties, as required by said Commission, shall promptly file a plat showing in detail all the lines owned and operated by them respectively, with full and explicit information as to their capacity, size and location, and the capacity of their pumping stations, gate valves, check valves and connections, of all kinds, required or used in the operation thereof. R. L. 1910, Sec. 4311.

Sec. 59. *Domestic pipe line companies have right of way.*—Every domestic pipe line company in this State is hereby

given authority to build, construct, lay and maintain oil pipe lines over, under, across, or through all highways, bridges, streets or alleys in this State or any public place therein under the supervision of the inspector of oil and gas wells and pipe lines as to where and how in said highways, bridges, streets, alleys and public places said pipe lines shall be laid, and subject to the control of the local municipalities, as to how the business of distribution in that municipality shall be conducted, and subject to responsibility as provided by law for any negligent injury thereby caused. R. L. 1910, Sec. 4312.

Sec. 60. *Eminent domain extended to oil pipe lines same as railroads.*—Any oil pipe line company, organized under the laws of this State shall have power to exercise the right of eminent domain in like manner as railroad companies for the purpose of securing rights of way and sites for pumping stations, storage tanks and depots. R. L. 1910, Sec. 3186.

Sec. 61. *Eminent domain, who may have—Foreign corporations.*—All persons, natural or artificial, except foreign corporations, shall have the right of eminent domain, and any right or prilivege hereby conferred, when necessary to make effective the purposes of this Article, and the rights thereby conferred. Foreign corporations organized under the laws of any other State, or the United States, and doing or proposing to do business in this State, and which shall have become a body corporate pursuant to or in accordance with the laws of this State, and which, as hereby provided, shall have registered its acceptance of the terms hereof, shall receive all the benefits provided by this article. R. L. 1910, Sec. 4313.

Sec. 62. *Commission may extend time for filing plats.*—Upon a sworn statement of the necessities which would justify a judicial continuance, the corporation commission is authorized to extend the time for the filing of the said plats, not, however, to exceed sixty days. R. L. 1910, Sec. 4314.

Sec. 63. *Penalty for violations.*—Any person, copartnership, or corporation, its agent or employee, violating any of the provisions of this Article, or any order of the competent courts of this State, of the Corporation Commission, pursuant to the jurisdiction conferred by this Article, shall upon conviction thereof, be fined a sum of not less than one thousand dollars, nor more than fixe thousand dollars, or imprisonment for not less than six months, nor more than one year, or by both such fine and imprisonment for each and every violation of this Article; but in case the monthly runs or takings or transportations of oil shall average so as to be without discrimination, as herein provided, the transaction or transactions of any particular day, week, or portion of a month shall be disregarded; and the competent court of the county in which the omission or commission which is a violation of this Article, has occurred, shall have jurisdiction of an action under the penal code for the punshment thereof; and said penalties shall not be exclusive of civil liability. R. L. 1910, Sec. 4315.

Sec. 64. *Suspension of penalty, when.*—Whenever the operation of a valid order of a competent court or the Corporation Commission is duly suspended, according to law, the punitive provisions of this Article, shall likewise be suspended in their operation as to the transactions adjudicated in said court, and, Further, any court having jurisdiction of an action brought by the State to punish for a violation under the terms of this Article, shall not impose a punishment therefor greater than five hundred dollars against any person or corporation, if it finds from the evidence that the violation was made solely with the object of testing according to law the validity of any of the provisions of this Article, or of the order of any competent court or of the Corporation Commission, in any proceeding to carry out the provisions hereof. R. L. 1910, Sec. 4316.

Sec. 65. *Certified transcript shall be evidence.*—A properly certified transcript of the report of any such corporation, association, or person shall, as against the maker

thereof, be prima facie evidence of the truth of any matter therein contained. R. L. 1910, Sec. 4317.

Sec. 66. *Commission may extend time for operation of law.*—For good cause shown, the Corporation Commission is authorized to extend the time within which this Article shall operate as to any particular corporation, association, or person, not to exceed nine months after the same becomes effective. R. L. 1910, Sec. 4318.

Chapter 3—CONSERVATION OF OIL AND GAS.

GENERAL PROVISIONS.

Secs. 86.1, 86.2, 86.4, 86.5, 97, 98, 102, 110, 111.

Sec. 86.1. *Definitions.*—For the purposes of this Act,

(a) The term "Commission" shall mean the Corporation Commission;

(b) The word "Person" shall include any individual, co-partnership, corporation, common law or statutory trust or association of whatever character.

(c) The term "Common Source of Supply" shall comprise and include that area which is underlaid or which, from geological or other scientific data, or from drilling operations, or other evidence, appears to be underlaid, by a common accumulation of oil or gas or both; provided, that, if any such area is underlaid, or appears from geological or other scientific data, or from drilling operations, or other evidence, to be underlaid by more than one common accumulation of oil or gas or both, separated from each other by a strata of earth and not connected with each other, then such area, as to each said common accumulation of oil or gas or both, shall be deemed a separate common source of supply;

(d) The term "Owner" shall mean a person who has the right to drill into and to produce from any common source of supply and to appropriate the production, either for himself or for himself and others;

(e) The word "Oil" shall mean crude petroleum oil, and any other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods;

(f) The word "Gas" shall mean all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in the sub-section above;

(g) The term "Producer" shall mean any person who, along or in association with another person or persons, shall have the right to drill into and produce from, or who has any interest in production from, any common source of supply in this State;

(h) The term "Operator" shall mean any producer of oil or gas who has drilled a well or wells into a common source of supply and is engaged in operating such well or wells for the purpose of producing oil or gas therefrom;

(i) The term "Taker" shall include any person. who, acting alone, or jointly with any person or persons, is directly or indirectly purchasing or transporting by any means whatsoever or otherwise removing oil or gas from any common source of supply in this State. Laws 1947, p. 326, Sec. 1.

Sec. 86.2. *Waste of Oil—Defined—Prohibited—Prevention—Protection of fresh water strata and oil or gas bearing strata.*—The term "waste," as applied to the production of oil, in addition to its ordinary meaning shall include economic waste, under-ground waste, including water encroachment in the oil or gas bearing strata; the use of reservoir energy for oil producing purposes by means or methods that unreasonably interfere with obtaining from the common source of supply the largest ultimate recovery of oil; surface waste and waste incident to the production of oil in excess of transportation or marketing facilities or reasonable market demands. The production of oil in the State of Oklahoma in such manner and under such conditions as to constitute waste as in this Act defined is hereby prohibited, and the Commission shall have authority, and

is charged with the duty, to make rules, regulations, and orders for the prevention of such waste, and for the protection of all fresh water strata and oil or gas bearing strata encountered in any well drilled for oil or gas. Laws 1947, p. 326, Sec. 2.

Sec. 86.4. *Common source of supply—Orders, rules and regulations.*—The commission is hereby empowered after notice of hearing to make all such orders, rules and regulations applicable to each common source of supply as it may find to be necessary or proper and to make general orders, rules and regulations applicable alike to all common sources of supply in the State. It shall not be necessary to publish such order, rule or regulation, after its adoption or promulgation by the Commission, before it shall go into effect, nor shall it be necessary to publish any such order, rule or regulation in each subsequent annual report of the Commission. Provided, that the Corporation Commission shall not under the provisions of this Act make any order establishing a well spacing or drilling unit. Laws 1947, p. 327, Sec. 4.

Sec. 86.5. *Procedural requirements.*—This Act shall be subject to all of the procedural requirements contained in Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes, 1951, including the right of appeal to the Supreme Court of the State on the part of any person aggrieved by any action of the Commission under and pursuant to this Act. Laws 1947, p. 327, Sec. 5.

Sec. 97. *Commission—Jurisdiction to make orders, rules and regulations—Hearings.*—The Commission upon its own motion, or upon the petition of the Attorney General, or of the Proration Attorney, or of the Propration Umpire, on behalf of the State, or of any operator, producer, or taker of oil from any common source of supply, to be affected by any such order, rule or regulation, filed with the Commission, shall have jurisdiction to make any and all orders, rules and regulations authorized and/or provided for in Sections 1 to 13 of this Act, inclusive, provided

that said orders, rules, and regulations shall be made only after a hearing before the Commission, of which the Commission shall have given at least ten (10) days' notice, by one publication of such notice in some newspaper of general circulation printed in Oklahoma City, Oklahoma, at which hearing the Attorney General, or the Proration Attorney or the Proration Umpire upon behalf of the State, any operator or taker or producer of oil from any common source of supply, or any other person interested in such common source or sources of supply to be affected by the order, rule or regulation sought, shall have an opportunity to offer evidence and to be heard in support of or in opposition to such motion or petition for such order, rule, or regulation. Such notice of hearing shall be signed by at least a majority of the members of the Commission and shall specify (a) the time and place of hearing, (b) briefly the general nature of the order or orders, rule or rules, regulation or regulations sought in the proceedings before the Commission, and (c) the name or names or general description of the common source or sources of supply that may be affected by any such rule, order, or regulation, unless by such motion or petition filed the order or orders, rule or rules, regulation or regulations sought are intended to apply and affect the entire State.

With respect to any motion or petition filed under the provisions of this Act, the service of notice thereof and any hearing thereon, and any order, rule or regulation, made thereon, the Commission shall have the power of a Court of record, and shall have the further powers and authority with respect thereto enumerated and provided in Section 15 of this Act; provided, that the Commission upon the date set or fixed in the notice of hearing in any proceeding commenced under the provisions of this Section, or at the time of such hearing therein, or of making any order or orders, rule or rules, regulation or regulations therein, may by its order provide that said proceeding shall be continued upon the docket of the Commission for further hearing or hearings therein, and for the issuance and/or promulga-

tion of further order or orders, rule or rules, or regulation or regulations by the Commission therein, modifying, supplementing, repealing or vacating any previous order, rule or regulation of the Commission therein as it shall determine; and if the Commission shall, in any such order, rule or regulation continuing any such case upon its docket for further hearings and orders therein, fix the time and place of such hearing or hearings, no further notice thereof shall be required; but if the Commission shall not, in its orders continuing upon its docket any such proceeding for further hearings and orders therein, fix the time and place of such hearing or hearings, then no further hearing therein shall be had until notice thereof shall have been given for the same length of time and in the same manner provided in this Act for notice of the initial hearing in said proceeding. Laws 1933, ch. 131, p. 284, Sec. 14.

Sec. 98. *Powers of Commission—Marshal of Commission.*—In all matters pertaining to the making, issuing and enforcement of its orders, rules and regulations made under the provisions of this Act, the Commission shall have and exercise all of the following powers and authority; to-wit (1) Of visitation and of a Court of Record; (2) To administer oaths; (3) To compel attendance of witnesses; (4) To compel the production of books and records; (5) To punish for contempt any person guilty of any disrespectful or disorderly conduct in the presence of the Commission while in session; (6) To punish as for contempt any disobedience or violation of the provisions of this Act and of any of its orders, rules, regulations, and judgments made or rendered by it under and in pursuance of the provisions of this Act; (7) To enforce the provisions of this Act, and compliance with any of its orders, rules, regulations or judgments by appropriate process, and by shut down orders, ordering and directing the shutting down or discontinuance of production of oil from any well or wells of or operated by the offender with respect to which complaint has been made; and by orders or writs remedial or otherwise

necessary or proper, to carry into effect its orders, rules and regulations; (8) To appoint or designate one of its agents or employees or one of the deputies to the Proration Umpire to act as Marshal of the Commission, who shall serve as such Marshal during its pleasure without additional compensation for such services, and who shall attend the sessions of the Commission, and when directed by it shall serve and execute orders, subpoenas, commitments and other process issuing from it. Laws 1933. ch. 131, p. 285, Sec. 15.

Sec. 102. *Contempt—Punishment—Enforcement of fines—Disposition of fines and penalties.*—Punishment for contempt by the Commission of any person, guilty of any disrespectful or disorderly conduct in the presence of the Commission while in session, or for disobedience of its subpoena, summons or other process, may be by fine not exceeding $1,000, or by confinement in the county jail of Oklahoma County not exceeding one (1) year, or by both. Any person who shall disobey or violate any of the provisions of this Act or any of the orders, rules, regulations or judgments of the Commission issued, promulgated or rendered by it, shall be punished as for contempt. Punishment by the commission in proceedings as for contempt for disobedience or violation of any provision of this Act or any of its orders, rules, regulations or judgments, issued, promulgated or rendered under the provisions of this Act, shall be by fine not exceeding in amount $5,000, and each day such disobedience or violation shall continue shall constitute a separate and additional contempt, and shall be punished by separate and additional fines each in amount not in excess of aforesaid amount. Any fine or penalty assessed under the provisions of this Act shall constitute and be a lien upon all the property of the offender within the State, except the homestead of such offender, provided that, before any such fine or penalty shall become a lien upon any property of the offender as against third persons, a copy of the order or judgment of the Commission assessing such fine or penalty,

certified by the Secretary of the Commission, shall be filed in the office of the Court Clerk of the County wherein any such property of the offender is located, and entered on the judgment docket of said court. If any such fine shall not be paid to the Commission within thirty (30) days after the order or judgment of the Commission imposing the same, the Commission shall issue an execution directed to the Proration Umpire commanding him to seize sufficient property of the offender to satisfy said fine; and it shall be the duty of the Proration Umpire to levy upon any property of the offender found within the State, and to sell and dispose of the same in like manner as now provided and required of sheriffs in this State in the levy upon and sale of property under an execution upon a judgment of a District Court of the State, and all costs incurred in the issuance, execution and sale under such levy shall be taxed against the defendant and collected in the same manner provided herein for the collection of such fine. All moneys collected as fines or penalties under the provisions of this Act, shall, when paid into or received by the Commission, be by it paid to the State Treasurer of the State for the credit of the Proration Fund. Laws 1933, ch. 131, p. 287, Sec. 19.

Sec. 110. *Market demand—Transportion and marketing facilities—Evidence—Proceedings and hearings.*—In any proceeding or at any hearing before the Commission wherein the Commission shall require or shall deem it advisable to ascertain and/or find the reasonable market demand and/or the transportation or marketing facilities for oil that may be produced from any common source of supply during any specific period of time thereafter, it shall be competent, subject to such limitations and conditions, as shall be prescribed and provided by general order or rule of the Commission, to receive in evidence in such proceeding or at such hearing, any statement which shall have been communicated to (a) the Commission, or (b) to the Secretary of the Commission, or (c) to the Proration Umpire, by any purchaser or taker of oil by (a) telegram, or (b) letter, which shall state the amount of oil produced from said

common source of supply (a) that such purchaser or taker contemplates or intends he or it will purchase during the period of time involved; or (b) the capacity of his or its transportation or marketing facilities which will be, during the period of time involved, available for transportation and/or marketing oil that may be produced from such common source of supply; and the Commission in ascertaining and determining the transportation or marketing facilities, or the reasonable market demands for oil during any such period of time that may be produced from such common source of supply may give such weight to such evidence that it shall determine the same is entitled. Laws 1933, ch. 131, p. 291, Sec. 27.

Sec. 111. *Collateral attack on orders, rules and regulations—Appeals—Supreme Court.*—No collateral attack shall be allowed upon orders, rules and regulations of the Commission made hereunder, but the sole method of reviewing such orders and inquiring into and determining their validity, justness, reasonableness or correctness shall be by appeal from such orders, rules or regulations to the Supreme Court. On appeal every such order, rule or regulation shall be regarded as prima facie, valid, reasonable and just. No court of this State except the Supreme Court, and it only on appeal, as herein provided, shall have jurisdiction to review, reverse, annul, modify or correct any order, rule or regulation of the Commission within the general scope of its authority herein or to enjoin, restrain or suspend execution or operation thereof, provided that writs of mandamus and prohibition shall lie from the Supreme Court to the Commission in all cases where such writs, respectively, would under like circumstances lie to any inferior court or officer. Laws 1933, ch. 131, p. 292, Sec 28.

OIL.

Secs. 271-279.

Sec. 271. *Waste prohibited.*—The production of crude oil or petroleum in the State of Oklahoma, in such manner

and under such conditions as to constitute waste, is hereby prohibited. Laws 1915, ch. 25, Sec. 1.

Sec. 272. *Production and sale regulated—Corporation Commission, authority of.*—The taking of crude oil or petroleum from any oil-bearing sand or sands in the State of Oklahoma at a time when there is not a market demand therefor at the well at a price equivalent to the actual value of such crude oil or petroleum is hereby prohibited, and the actual value of such crude oil or petroleum at any time shall be the average value as near as may be ascertained in the United States at retail of the by-products of such crude oil or petroleum when refined less the cost and a reasonable profit in the business of transporting, refining and marketing the same, and the Corporation Commission of this State is hereby invested with the authority and power to investigate and determine from time to time the actual value of such crude oil or petroleum by the standard herein provided, and when so determined said Commission shall promulgate its findings by its orders duly made and recorded, and publish the same in some newspaper of general circulation in the State. Laws 1915, ch. 25, Sec. 2.

Sec. 273. *Waste defined—Regulations to prevent.*—The term "waste" as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, and waste incident to the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands The Corporation Commission shall have authority to make rules and regulations for the prevention of such wastes, and for the protection of all fresh water strata, and oil and gas bearing strata, encountered in any well drilled for oil Laws 1915, ch. 25, Sec. 3.

Sec. 274. *Common source of supply—Restrictions on production when full production would cause waste—Powers of Corporation Commission—Discrimination prohibited.*—Whenever the full production from any common source of supply of crude oil or petroleum in this State can only

be obtained under conditions constituting waste, as herein defined, then any person, firm or corporation, having the right to drill into and produce oil from any such common source of supply, may take therefrom only such proportion of all crude oil and petroleum that may be produced therefrom, without waste, as the production of the well or wells of any such person, firm or corporation, bears to the total production of such common source of supply. The Corporation Commission is authorized to so regulate the taking of crude oil or petroleum from any or all such common sources of supply, within the State of Oklahoma, as to prevent the inequitable or unfair taking, from a common source of supply, of such crude oil or petroleum, by any person, firm, or corporation, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another. Laws 1915, ch. 25, Sec. 4.

Sec. 275. *Wells gauged—Regulation by Corporation Commission—Agents.*—For the purpose of determining such production, a gauge of each well shall be taken under rules and regulations to be prescribed by the Corporation Commission, and said Commission is authorized and directed to make and promulgate, by proper order, such other rules and regulations, and to employ or appoint such agents with the consent of the Governor, as may be necessary to enforce this act. Laws 1915, ch. 25, Sec. 5.

Sec. 276. *Enforcement of act—Hearings before Corporation Commission.*—Any person, firm, or corporation, or the Attorney General on behalf of the State, may institute proceedings before the Corporation Commission, or apply for a hearing before said Commission, upon any question relating to the enforcement of this act, and jurisdiction is hereby conferred upon said Commission to hear and determine the same. Said Commission shall set a time and place, when and where such hearing shall be had and give reasonable notice thereof to all persons or classes interested therein, by publication in some newspaper or newspapers, having general circulation in the State, and in ad-

dition thereto shall cause reasonable notice in writing to be served personally on any person, firm or corporation complained against. In the exercise and enforcement of such jurisdiction, said Commission is authorized to determine any question or fact, arising hereunder, and to summon witnesses, make ancillary orders, and use mesne and final process, including inspection and punishment as for contempt, analogous to proceedings under its control over public service corporations, as now provided by law. Laws 1915, ch. 25, Sec. 6.

Sec. 277. *Appeals to Supreme Court—Effect on orders.*—Appellate jurisdiction is hereby conferred upon the Supreme Court in this State to review the action of said Commission in making any order, or orders, under this act. Such appeal may be taken by any person, firm or corporation, shown by the record to be interested therein, in the same manner and time as appeals are allowed by law from other orders of the Corporation Commission. Said orders so appealed from shall not be superseded by the mere fact of such appeal being taken, but shall be and remain in full force and effect until legally suspended or set aside by the Supreme Court. Laws 1915, ch. 25, Sec. 7.

Sec. 278. *Violation—Penalties.*—In addition to any penalty that may be imposed by the Corporation Commission for contempt, any person, firm, or corporation, or any officer, agent or employee thereof, directly or indirectly violating the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, in a court of competent jurisdiction, shall be punished by a fine in any sum not to exceed five thousand dollars ($5,000.00), or by imprisonment in the county jail not to exceed thirty (30) days, or by both fine and imprisonment. Laws 1915, ch. 25, Sec. 8.

Sec. 279. *Partial invalidity.*—The invalidity of any section, sub-division, clause or sentence of this act shall not in any manner affect the validity of the remaining portion thereof. Laws 1915, ch. 25, Sec. 10.

FILED
MAY 13 1957
JOHN T. FEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 914

GULF OIL CORPORATION,
Appellant,
VERSUS
CORPORATION COMMISSION OF THE STATE OF OKLAHOMA; RAY C. JONES, WILBURN CARTWRIGHT and HAROLD FREEMAN, as Members of said Corporation Commission and as Individuals,
Appellees.

MOTION TO AFFIRM

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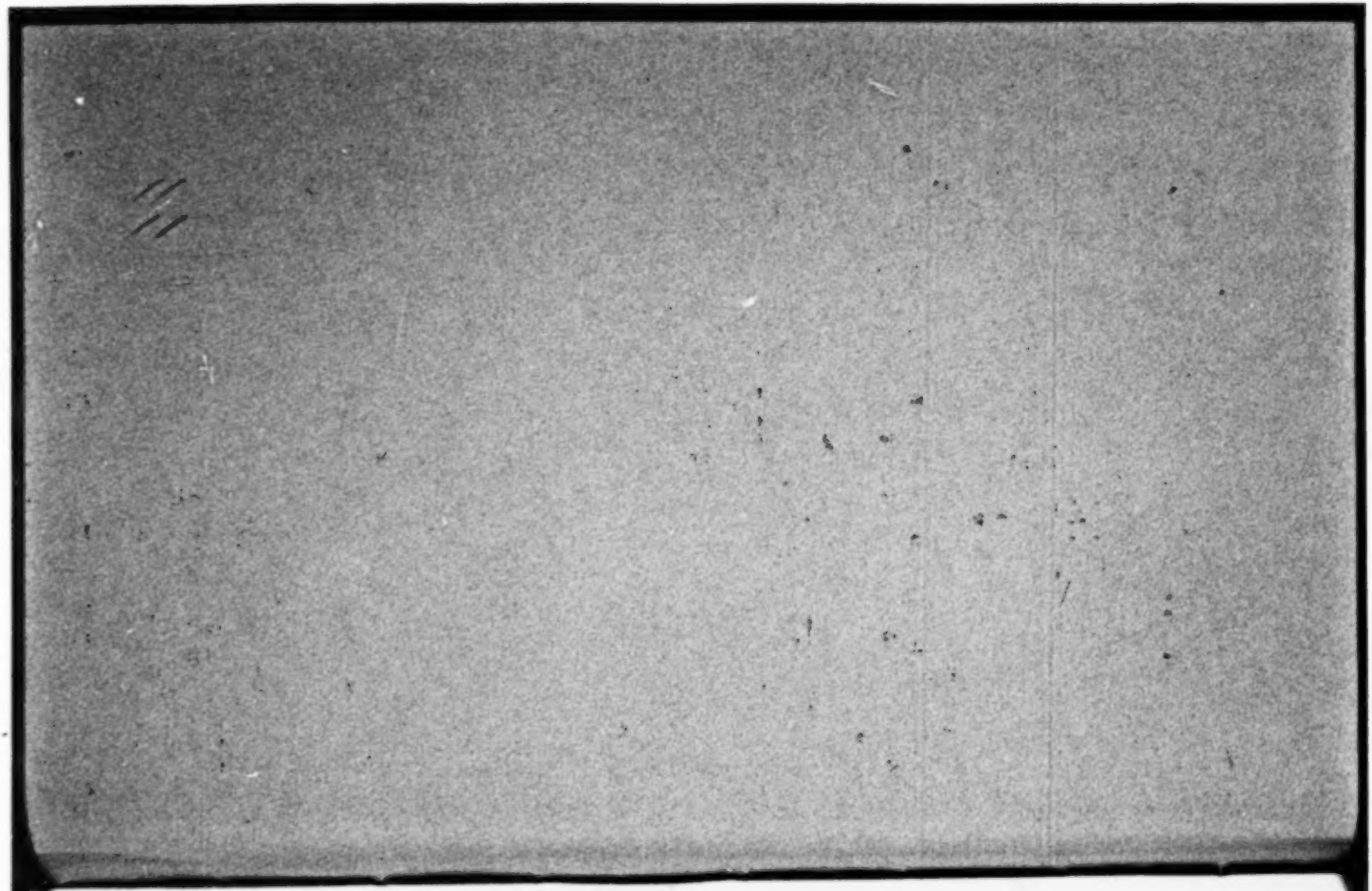

INDEX

	PAGE
Motion to Affirm	1
Statement of the Case	1
Questions Presented	8
Did the District Court abuse its discretion in abstaining from exercising jurisdiction, in deference to local tribunals, since adequate state court review of this administrative order, based upon predominantly local factors, is available to appellant?	8
Argument	9
There Was no Abuse of Discretion	10
The Claimed Constitutional Issues Are Insubstantial	16
Conclusion	22
Certificate of Service	24
APPENDIX	
Report of Corporation Commission of the State of Oklahoma in Cause CD No. 8315, Order No. 32809	i-xxxi

AUTHORITIES CITED

CASES:

Alabama Public Service Co. v. Southern Railway Co., 341 U.S. 341	2, 8, 10, 11, 15-16
A., T. & S. F. Ry. Co. v. Corp. Comm. (Okla.), 170 Pac. 1156	11
Baldwin v. Seelig, 294 U.S. 511	19
Buck v. California, 343 U.S. 99	21
Buck v. Kuykendall, 267 U.S. 307	21
Burford v. Sun Oil Co., 319 U.S. 315	2, 11, 15, 20
Bush Co. v. Maloy, 267 U.S. 317	21

INDEX CONTINUED

	PAGE
California v. Zook, 336 U.S. 804	21
Champlin Refining Co. v. Corporation Commission, 286 U.S. 210	2
Cities Service Gas Co. v. Peerless Oil and Gas Co., 340 U.S. 179	14, 18-19, 20
City of Tulsa v. Corp. Comm. (Okla.), 221 Pac. 1000	11
Dean Milk Co. v. City of Madison, 340 U.S. 349	19
Govt. & Civic Employees Org. Comm., CIO, v. Windsor, D.C., Ala., 116 F. Supp. 354, Aff., 347 U.S. 901	15
Great Lakes Dredge and Dock Co. v. Huffman, 319 U.S. 293	16
Hood & Sons v. DuMond, 336 U.S. 525	19
Lloyd A. Fry Roofing Co. v. Wood, 344 U.S. 157	21
Local 333B, etc., v. Battle, D.C., Va., 101 F. Supp. 650, Aff., 342 U.S. 880	15
Mayo v. Lakeland Highlands Canning Co., 309 U.S. 310	8
Milk Control Board v. Eisenberg Farm Products, 306 U.S. 346	19
Natural Gas Pipeline Co. v. Slattery, 302 U.S. 300	15
Ohio Oil Co. v. Indiana, 177 U.S. 190	2
Oklahoma v. Kansas Natural Gas Co., 221 U.S. 229	19
Panhandle Eastern Pipe Line Co. v. Michigan Public Service Commission, 341 U.S. 329	19
Panhandle Eastern Pipe Line Co. v. Public Service Comm. of Indiana, 332 U.S. 507	14
Parker v. Brown, 317 U.S. 341	19
Pennsylvania v. West Virginia, 262 U.S. 553	19
Peppers Refining Co. v. Corporation Commission, 198 Okla. 451, 179 P.2d 899	4
Prentis v. Atlantic Coast Line Ry. Co., 211 U.S. 210	14
Public Service Commission v. Wycoff Co., Inc., 344 U.S. 237	12, 13, 16

INDEX CONTINUED

PAGE

Public Utilities Comm. of Calif. v. United Air Lines, 346 U.S. 402 ..... 13, 16
Public Utilities Commission of California v. U. S., 77 Sup. Ct. 221 14
Public Utilities Commission of Ohio v. United Fuel Gas Co., 317 U.S. 456 13

Railroad Commission of Texas v. Pullman Co., 312 U.S. 496 ..... 14, 15, 16
Railroad Comm. v. Rowan & Nichols Oil Co., 311 U.S. 570, 574 ..... 15, 17
Railroad Comm. v. Rowan & Nichols Oil Co., 310 U.S. 573, 580 ..... 15, 17
Republic Natural Gas Co. v. State of Oklahoma, 334 U.S. 62, 95 12-13

So. Carolina State Highway Dept. v. Barnwell Bros., 303 U.S. 177 19
Southern Pacific Co. v. Arizona, 325 U.S. 761 ..... 14, 20
Spector Motor Service v. McLaughlin, 323 U.S. 101 ..... 14, 15

Terminal Railroad Ass'n of St. Louis v. Brotherhood of Railroad Trainmen, 318 U.S. 1 ..... 14, 19, 21
Texas Co. v. Montgomery, D.C., La., 73 F. Supp. 527, Aff., 332 U.S. 827 15
Town of Centrahoma v. Carter Oil Co. (Okla.), 283 P.2d 199 11

United Fuel Gas Co. v. Public Service Commission, 278 U.S. 322 8
U. S. v. Corrick, 298 U.S. 435 8
United States v. Public Utilities Commission of California (D.C., Calif.), 141 F. Supp. 168 14

STATUTES:

52 Okla. Stat. 1951, Secs. 54, 56 6
52 Okla. Stat. 1951, Secs. 54, 112, 113 11
52 Okla. Stat. 1951, Secs. 111, 113, 115 11
52 Okla. Stat., 1951, Secs. 86.1, 97, 274 et seq. 6

INDEX CONTINUED PAGE

MISCELLANEOUS:

Commerce Clause (U.S. Const., Art. 1, Sec. 8) 1, 14
Oklahoma Constitution, Art. IX, Sec. 20 11
Revised Rules of the Supreme Court, Rule 15(1)(g) 8

In the
Supreme Court of the United States
OCTOBER TERM, 1956

No. 914

GULF OIL CORPORATION,
Appellant,

VERSUS

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA; RAY C. JONES, WILBURN CARTWRIGHT and HAROLD FREEMAN, as Members of said Corporation Commission and as Individuals,

Appellees.

MOTION TO AFFIRM

Appellees move, pursuant to Rule 16 of the Revised Rules of this Court, that the judgment and order of the District Court dismissing the complaint be affirmed, upon the ground that the questions raised are manifestly so insubstantial as not to need further argument.

STATEMENT OF THE CASE

By this action, Gulf Oil Corporation sought to enjoin enforcement of certain oil and gas conservation orders of the Oklahoma Corporation Commission, upon the ground that the Commerce Clause (U. S. Const., Art. 1, Sec. 8) of its own force invalidated the orders. Due Process was also mentioned, but not seriously urged. The District Court

dismissed the complaint without deciding the merits of the claim, upon authority of *Alabama Public Service Co.* v. *Southern Railway Co.*, 341 U.S. 341, from which judgment Gulf appeals.

The orders attacked are part of the continuing regulatory processes of state oil and gas conservation, delegated by Oklahoma law to the Corporation Commission. Authority for the orders is found in various statutory provisions, all parts of a comprehensive body of oil and gas conservation legislation which has existed in Oklahoma for many years. These statutes are set out as Appendix 3 to the jurisdictional statement. Appellant does not assert the unconstitutionality of any of these state laws, under the Commerce Clause or otherwise. All of these statutes are admittedly valid and constitutional. As laws directed toward conservation of oil and gas and protection of correlative rights in the course thereof, they constitute valid exercise of state police power. *Ohio Oil Co.* v. *Indiana*, 177 U.S. 190; *Champlin Refining Co.* v. *Corporation Commission*, 286 U.S. 210; *Burford* v. *Sun Oil Co.*, 319 U.S. 315.

Appellant does attack portions of regular monthly orders of the Corporation Commission of Oklahoma, wherein the market demand for Oklahoma oil for the ensuing month (or months) is determined, and total production justified by market conditions allocated among the individual oil wells of the state. Appellant claims parts of these orders unconstitutionally burden interstate commerce. The challenged orders are not set out in the jurisdictional statement, only excerpts therefrom, taken out of context. Order No. 32809 (the first in time) is appended

hereto as Appendix A. The other orders here involved differ in no material particulars from the order appended.

In promulgating its periodic conservation orders, the Commission draws on years of experience in the continuing adjustment and analysis of factors affecting market demand for crude petroleum. Each such order follows a full hearing, at which the conflicting interests of producers, royalty owners and purchasers are aired and considered. Gulf and other common purchasers of oil regularly send representatives, participate in the proceedings, and file nominations, which are estimates of their purchase requirements. Various interested parties—producers, refiners, royalty owners and others—do likewise. The interests and desires of the various participants invariably in a great or small measure are in conflict.

The Commission receives market estimates of the U. S. Bureau of Mines, and of the Oklahoma Director of Conservation; it receives the nominations of purchasers, and a variety of other evidence and recommendations. Balancing the conflicting interests and recommendations, the Commission establishes the maximum daily oil production for the state for the ensuing month, on the basis of its informed judgment as to the true market demand for Oklahoma crude oil.

By mechanical processes, this figure is translated into maximum daily allowable production figures for each pool, lease and well. Well allowables are established separately for each common source of supply, considering depth, capacity and a variety of engineering and other factors. The same order contains a wide range of exceptions to basic allowables, applicable to new wells, discovery wells, test-

ing wells, salt water wells, secondary recovery projects and similar instances where for production and engineering reasons, the enforcement of basic well allowables would be inequitable.

The entire proration order is a network of compromises and adjustments, seeking to determine the true market demand for the state as a whole, and to allocate the market demand thus determined fairly and equitably among all producing oil wells.

Crude oil produced in Oklahoma is purchased by various companies, for their own processing, or for transport to local or out of state refineries. For the most part these common purchasers own or control the pipe lines by which almost all crude oil is carried to market. Fluctuations in the Commission's determination of market demand causes like fluctuations in the amount of oil available to those purchasers at their lease connections.

The inevitable result of proration orders keyed to market demand is that the allowables assigned to wells served by a particular purchaser will not invariably coincide with what that purchaser needs or desires to buy.

Depending on the number and capacity of oil wells served, the same level of market demand may result in serious oversupply to one common purchaser and undersupply to another. *Cf. Peppers Refining Co.* v. *Corporation Commission,* 198 Okla. 451, 179 P.2d 899. Normally, these supply problems are adjusted within the industry.

With increasing frequency the Commission has been faced with the problem of "purchaser proration", a practice whereby a pipeline common purchaser of oil, as appellant

here, claiming an oversupply under current proration orders, undertakes to reduce its purchases of crude oil independent of Commission actions. Various conditions give rise to the practice. Most often it is because the large number of lease connections secured to provide adequate supply in times of low allowables provide an oversupply at higher production levels. In appellant's case, it was apparently the result of an excessive number of pipeline lease connections, combined with greatly increased bulk purchases of oil from other primary purchasers in exchange for its own crude oil production in other areas.

As is usual in such situations, while Gulf and one or two others were purchasing only part of commission-established well allowables, the great majority of common purchasers were taking the full field allowables from the wells they served.[1]

Reduction of purchases by appellant is according to an arbitrary formula which serves its interests alone. No regard is given to the factors that cause the Commission to exempt certain wells from production restrictions altogether; nor to the matter of ratable taking between wells or fields. Waste, discrimination, and injury to correlative rights are the inevitable results of uncontrolled purchaser proration. Discrimination and unratable taking results between common sources of supply, and between wells in the same source of supply. Discrimination multiplies where,

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[1] 92 per cent of common purchasers, purchasing 86 per cent of the state's oil, were purchasing full allowables at the time of the order. Over half the purchasers were then taking less than they nominated. Gulf purchases 4 per cent of the state's oil. The amount here in controversy is .05 per cent of total state production, an amount which is, to quote appellant's witness Dietler, "a drop in the bucket."

as here, Gulf is found to be taking, directly or through others, different amounts of oil from different wells in the same oil field. See Order 32809, Par. 6.

The Corporation Commission has the power, under Oklahoma law, to regulate the taking of oil (including purchasing and transportation) as well as its physical production. 52 Okla. Stat., 1951, Secs. 86.1, 97, 274 *et seq.* Such power is necessary to effective enforcement of conservation, and necessary to protect the correlative rights of all participants in the production phase of the oil industry. Further, pipeline purchasers of oil are by Oklahoma law designated common carriers and common purchasers and are invested with public duties and responsibilities to furnish facilities and buy all available oil. 52 Okla. Stat. 1951, Secs. 54, 56.

In turn, the Commission has the power to protect the interests of the common purchaser; and to insure, in various ways, that a common purchaser of oil is not injured from an oversupply or undersupply of oil under current levels of production.

The accommodation of the conflicting interests of oil producers and oil purchasers is a matter peculiarly within the competence of the Corporation Commission in its regulatory function, and requires continuing supervision and adjustment.

When the ill effects of purchaser proration had grown to serious proportions, the Commission promulgated the order complained of here, by its terms designed to assist in enforcing the equitable distribution of the state's market

demand among its producing wells. See Order 32809, Findings, pars. 8, 19, 20, 22, 40. The order provides:

> "26. That all takers and/or purchasers of crude oil in Oklahoma shall take the full amount of oil allowed by this order unless relieved therefrom by this Commission after notice and hearing as provided for by law."

The order is intended to insure equitable and ratable taking from the various wells and fields of the state in accordance with the scientifically calculated allowables assigned each well by the Commission.

If by assuring the producer the right to produce and market his fair share of the total market demand, a burden is imposed upon the common purchaser, which cannot be alleviated by normal industry methods of adjustment, the Commission itself will come to the aid of the purchaser, and promulgate and enforce an adjustment calculated to be equitable to both.

Rightly, the Commission determined that if peculiar market conditions applicable alone to one common purchaser demand even greater restrictions in production in a particular area, the adjustment thereof should be made by the Commission, after hearing to establish the facts and conditions requiring it, and with a view to protecting the rights of all interested parties.

Immediately after the order was issued, Gulf Oil Corporation filed suit to enjoin the enforcement thereof, and caused a three judge Federal District Court to be convened. Gulf claimed, *inter alia*, that the order was unauthorized under Oklahoma law, that it did not apply to Gulf, that it

was issued on defective notice, and finally, that its enforcement would result in an unconstitutional burden on interstate commerce.

Appellees filed their motion to dismiss the complaint, on jurisdictional and other grounds. At the hearing, the Court reserved ruling on the motion to dismiss, and heard evidence going to the merits of Gulf's claim. Thereafter, the Court, in its written opinion (147 F. Supp. 640) sustained the motion to dismiss upon authority of *Alabama Public Service Commission* v. *Southern Railway Co.*, 341 U. S. 341, and similar cases. In its judgment and opinion, the District Court made no adjudication of the merits of the controversy. It did not decide the supposed constitutional issues raised, or appellant's right to injunctive relief.

QUESTIONS PRESENTED

There is only one question presented by this appeal:

Did the District Court abuse its discretion in abstaining from exercising jurisdiction, in deference to local tribunals, since adequate state court review of this administrative order, based upon predominantly local factors, is available to appellant?

—*U. S.* v. *Corrick*, 298 U.S. 435;

Mayo v. *Lakeland Highlands Canning Co.*, 309 U.S. 310;

United Fuel Gas Co. v. *Public Service Commission*, 278 U.S. 322, and cases cited;

Rule 15(1)(g), Revised Rules of the Supreme Court.

The other purported questions, recited in the jurisdictional statement (p. 3) are not issues upon this appeal. Whether the challenged order contravenes the Commerce Clause or the Due Process Clause of the Constitution, or whether appellant has established just cause for injunctive relief, are not up for decision here. The District Court dismissed the complaint on jurisdictional grounds. It did not adjudicate the merits of the controversy, and did not decide any of the purported constitutional issues urged by appellants. The case will not be tried here on its merits in the first instance, on constitutional issues or otherwise.

The constitutional issues advanced but not decided below have no significance in this appeal, except insofar as their presence in the controversy may bear on whether the District Court's abstention constituted an abuse of discretion.

ARGUMENT

Previous decisions of this Court show clearly that abstention by the District Court was not an abuse of its discretion; that indeed, if it had taken jurisdiction and attempted to adjudicate the controversy, its action in that regard would constitute reversible error.

In addition, the previous decisions of this Court indicate as clearly that no substantial constitutional question exists in this case; that the purported constitutional issues (even if up for decision) are frivolous, not requiring or justifying further argument.

There Was no Abuse of Discretion

In *Alabama Public Service Commission* v. *Southern Ry. Co.*, 341 U.S. 341, 348, this Court announced the doctrine governing exercise of jurisdiction by Federal District Courts where injunction is sought on constitutional grounds to prevent enforcement of state regulatory orders:

> "As adequate state court review of an administrative order based upon predominantly local factors is available to appellee, intervention of a federal court is not necessary for the protection of federal rights. Equitable relief may be granted only when the District Court, in its sound discretion exercised with the 'scrupulous regard for the rightful independence of state governments which should at all times actuate the federal court,' is convinced that the asserted federal right cannot be preserved except by granting the 'extraordinary relief of an injunction in the federal courts.' Considering that 'few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies,' the rule of comity must govern the exercise of equitable jurisdiction by the District Court in this case. Whatever rights appellee may have are to be pursued through the state courts. *Burford* v. *Sun Oil Co.* 1943, 319 U.S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424; *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.* 1941, 311 U.S. 570, 577, 61 S. Ct. 343, 346, 85 L. Ed. 358; *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 310 U.S. 573, 60 S. Ct. 1021, 84 L. Ed. 1368, as amended, 1940, 311 U.S. 614, 615, 61 S. Ct. 66, 85 L. Ed. 390."

This case falls directly within the rule above stated. Adequate state court review of the challenged order exists

under Oklahoma law.[2] Review of Oklahoma courts is even speedier and simpler than the Texas or the Alabama procedure found adequate in *Burford* v. *Sun Oil Co.*, 319 U.S. 315, and *Alabama Public Service Commission* v. *Southern Ry. Co., supra.*

The factors giving rise to the order, and by which its validity is to be judged, are predominantly local. They involve the very real and important interest of the state in preventing discrimination and inequity in the production and taking of oil from the common sources of supply of the state *(Burford* v. *Sun Oil Co.*, 319 U.S. 315, 320-1), and the balancing of those interests against the interests of common purchasers. Also involved is the basic authority of local government to protect the rights of all persons interested in the production of oil and gas, and to arrive at an equitable adjustment of their conflicting interests and de-

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[2] The District Court so found in the majority opinion (Appendix 1 to Jurisdictional Statement, p. 25). These remedies include: (1) Exclusive direct appeal to the Supreme Court of Oklahoma on all questions of law and fact (Okla. Const., Art. IX, Sec. 20; 52 Okla. Stat. 1951, Secs. 111, 113, 115) with precedence as to disposition; the appellate court having power to review the reasonableness, as well as the validity of the order, and to enter the proper order if incorrect for any reason. Appellant is not prejudiced by lapse of time in failing to perfect its appeal (52 Okla. Stat. 1951, Secs. 54, 112, 113). (2) Original action in Prohibition in the Supreme Court of Oklahoma, Okla. Const., Art. IX, Sec. 20; 52 Okla. Stat. 1951, Sec. 111. *Town of Centrahoma* v. *Carter Oil Co.* (Okla.), 283 P.2d 199; *A., T. & S. F. Ry. Co.* v. *Corp. Comm.* (Okla.), 170 Pac. 1156; *City of Tulsa* v. *Corp. Comm.* (Okla.), 221 Pac. 1000.

sires.[3] See (concurring opinion)—*Republic Natural Gas Co.* v. *State of Oklahoma*, 334 U.S. 62 at 95.

The District Court recognized these principles when it stated in the majority opinion:

> "Unquestionably the transactions covered by the controverted order bear some real relationship to interstate commerce. However, such does not alter the fact that the subject matter of this order is of a dominant local character and involves local law. Significantly local authorities, in the absence of a clearly defined preemption to the federal government, have the right to affect interstate commerce in the absence of placing an unreasonable burden thereon; and, this order cannot be deemed invalid on its face merely because interstate commerce is touched. Moreover, the doctrine of abstention is not precluded from application merely because the constitutional issue arises in connection with the commerce clause. As recognized in Gulf's own brief, for this court to exercise its jurisdiction it must appear from the face of the contested order itself that there has been an attempt by local officials to exercise a federally preempted power, as distinguished from a mere invalid or abusive use of legally possessed state authority. And, the mere statement of this test seems conclusive in the instant suit. In this case it is impossible to separate the claims of constitutional infringement from questions involving interpretation of Oklahoma law; and, the order even

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[3] Of course, Gulf asserted below, and alleges here that the order is not, according to its terms, a conservation order, but instead is a colorable attempt by the appellees to seize for Oklahoma more than its share of the national market. This attack on the integrity and good faith of the Commission and its members is without justification in or out of the record. In any event, determination of the true nature of the order itself especially calls for review by the Oklahoma Supreme Court, not collateral attack in federal courts. *Public Service Commission* v. *Wycoff Co., Inc.*, 344 U.S. 237.

> if ultimately held invalid under the Oklahoma law, by all reasonable standards is rationally related to express authority held by the Commission to protect correlative rights, and cannot be deemed merely an attempt to usurp authority in a field exclusively delegated to the federal government."

Inextricably intertwined with the above factors of predominantly local significance are unsolved questions of local law, which are not abandoned by appellant, nor removed from the controversy by being ignored in argument here. These questions include whether Oklahoma conservation statutes extend authority to enter the order appellant complains of; whether the order and the laws authorizing it apply to appellant and its Oklahoma operations; and whether the procedure under which the order was entered was fatally defective.

The District Court was bound to honor the doctrine of abstention, at least unless it was apparent from the face of the order itself, that appellees undertook thereby to regulate a field wherein Congress, in its paramount authority, had already assumed exclusive regulatory authority. This is the most appellant can gain from *Public Utilities Commission of Ohio* v. *United Fuel Gas Co.*, 317 U.S. 456. But see *Public Utilities Comm. of Calif.* v. *United Air Lines*, 346 U.S. 402; *Public Service Commission of Utah* v. *Wycoff Co., Inc.*, 344 U.S. 237.

The production of oil and gas and conservation of these natural resources, are fields in which Congress admittedly has not undertaken exclusive regulatory power, even to the extent that these activities constitute interstate commerce. The respective states are free to regulate those

activities in the exercise of their reserved police powers, even though such regulation affects, or even burdens, interstate commerce.[4] *Cities Service Gas Co.* v. *Peerless Oil and Gas Co.*, 340 U.S. 179; *Panhandle Eastern Pipe Line Co.* v. *Public Service Comm. of Indiana*, 332 U.S. 507. See also *Terminal Railroad Ass'n of St. Louis* v. *Brotherhood of Railroad Trainmen*, 318 U.S. 1.

Any constitutional issues involving the Commerce Clause or the Due Process Clause are so bound up with questions involving interpretation of local conservation laws, as to be incapable of separation. Decision in the state courts, either as to the authority for the order or its reasonableness, may well make decision of any federal constitutional issues unnecessary. The Supreme Court of Oklahoma is, with the federal courts, bound to uphold the United States Constitution. Even should constitutional issues survive state court review, they may then be tendered to this Court uncomplicated by speculation as to the scope and meaning of state regulatory statutes. Compare *Southern Pacific Co.* v. *Arizona*, 325 U.S. 761, with *Burford* v. *Sun Oil Co.*, 319 U.S. 315; *Railroad Commission of Texas* v. *Pullman Co.*, 312 U.S. 496; *Spector Motor Service* v. *McLaughlin*, 323 U.S. 101; *Prentis* v. *Atlantic Coast Line Ry. Co.*, 211 U.S. 210.

This Court has required abstention in cases raising constitutional questions under the Commerce Clause, the

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[4] *United States* v. *Public Utilities Commission of California* (D.C., Calif.), 141 F. Supp. 168, probable jurisdiction noted, *Public Utilities Commission of California* v. *U. S.*, No. 447, October Term, 1956, (77 Sup. Ct. 221), upon which appellant relies for jurisdiction, involves a state law claimed to conflict with the exclusive and paramount sovereign power to provide for the national defense. United States Constitution, Art. I, Sec. 8, Cl. 1, 12.

Due Process Clause, or both; and even when these were the only questions raised. *Railroad Comm.* v. *Pullman Co.*, 312 U.S. 496; *Natural Gas Pipeline Co.* v. *Slattery*, 302 U.S. 300; *Spector Motor Service* v. *McLaughlin*, 323 U.S. 101.

It has required abstention from deciding constitutional questions where, as here, construction of state statutes may make such a decision unnecessary, *Railroad Comm. of Texas* v. *Pullman Co.*, 312 U.S. 496. It has required abstention where the challenged orders operate in the field of oil and gas conservation a highly specialized aspect of a complicated system of local law, outside the normal competence of a federal court; and where continuing supervision by a state regulatory body is particularly effective and federal intervention notoriously inappropriate. *Burford* v. *Sun Oil Co.*, 319 U.S. 315; *Railroad Comm.* v. *Rowan & Nichols Oil Co.*, 310 U.S. 573, 580; *Railroad Comm.* v. *Rowan & Nichols Oil Co.*, 311 U.S. 570.

In such circumstances the action of the District Court in abstaining from exercising jurisdiction in the controversy has been affirmed by this Court. *Govt. & Civic Employees Org. Comm., CIO*, v. *Windsor*, D.C., Ala., 116 F. Supp. 354, *Affirmed*, 347 U.S. 901; *Texas Co.* v. *Montgomery*, D.C., La., 73 F. Supp. 527; *Affirmed*, 332 U.S. 827; *Local 333B, etc.*, v. *Battle*, D.C., Va., 101 F. Supp. 650, *Affirmed*, 342 U.S. 880.

Under the same conditions, had the District Court exercised jurisdiction and set out to decide the purported constitutional issues, its action therein would constitute error, requiring reversal here. *Alabama Public Service*

Comm. v. *Southern Ry. Co.*, 341 U.S. 341; *Railroad Commission* v. *Pullman Co.*, 312 U.S. 496; *Public Service Comm. of Utah* v. *Wycoff Co., Inc.*, 344 U.S. 237; *Public Utility Commission of Calif.* v. *United Air Lines*, 346 U.S. 402. Even for the District Court to have decided the case on its merits in favor of the constitutionality of the order would have been error. *Great Lakes Dredge and Dock Co.* v. *Huffman*, 319 U.S. 293.

The allegations of the jurisdictional statement do not show in any manner that the District Court abused its discretion in adhering to the principles of the above cited cases, and abstaining from adjudicating the controversy in deference to available state court review.

In dismissing the action, the District Court acted within the scope of its permissible discretion, as that discretion is outlined by previous decisions of this Court. Accordingly, there exists no substantial question justifying further argument here, and appellees respectfully suggest that the judgment of the District Court should be affirmed.

The Claimed Constitutional Issues Are Insubstantial

The issues under the United States Constitution which appellant claims were raised by the complaint, though not decided by the District Court, are without substance and frivolous. They would not justify argument on their merits here, even if now before this Court on appeal.

Appellant claims the challenged order unconstitutionally burdens interstate commerce in two ways: First, it claims that the market demand for Oklahoma oil was less

than the Commission found it to be; and thus the order unconstitutionally burdened commerce in oil of all purchasers for interstate shipment. Secondly, Gulf claims that its re-purchases of Oklahoma oil and its purchases of oil in other states permitted it to buy only 19,500 barrels of Oklahoma lease oil for its Ohio refinery; and thus an order requiring it to purchase more unconstitutionally burdened Gulf's own interstate commerce.

Neither of these matters would present a substantial constitutional issue. As concerns the correctness of the Commission's determination of market demand, neither this Court nor the District Court will substitute its judgment of market demand for that of the Corporation Commission of Oklahoma—*Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, 310 U.S. 573, 580. The evidence and complaints Gulf details should have been and in substance were presented to the Commission. These contentions cannot be reheard in proceedings for federal injunction. Nor will Gulf's contentions that a different order would better have solved the problem be countenanced here. *Railroad Comm.* v. *Rowan & Nichols Oil Co.*, 311 U.S. 570, 574.

Similarly, no substantial constitutional issue is raised by appellant's contention that its own facilities—including the location and capacity of its producing leases, pipelines and refineries—are such that the order constitutes a burden selectively upon its own commerce. The order itself, and Oklahoma law otherwise, makes provision for relief in cases of hardship. Gulf asserted it had no right to such relief, except under the Commerce Clause. Instead, it

called upon the Commission to "exempt *all* interstate purchases from the operation of the order." Thus, the nature and extent of any burden, actual or imagined, on the commerce of Gulf or any other purchaser, was never an issue—only whether the Commerce Clause of its own force invalidates the order because of its inherent interference with a paramount national interest.

In *Cities Service Gas Co.* v. *Peerless Oil & Gas Co.*, 340 U.S. 179, this Court outlined the governing principle when state regulation is said to interfere with paramount national interest as follows:

> "The Commerce Clause gives to the Congress a power over interstate commerce which is both paramount and broad in scope. But due regard for state legislative functions has long required that this power be treated as not exclusive. *Cooley* v. *Board of Wardens of Port of Philadelphia*, 1851, 12 How. 299, 13 L. Ed. 996. It is now well settled that a state may regulate matters of local concern over which federal authority has not been exercised, even though the regulation has some impact on interstate commerce. *Parker* v. *Brown*, 1943, 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315; *Milk Control Board of Pennsylvania* v. *Eisenberg Farm Products*, 1939, 306 U.S. 346, 59 S. Ct. 528, 83 L. Ed. 752; *South Carolina State Highway Dept.* v. *Barnwell Bros.*, 1938, 303 U.S. 177, 58 S. Ct. 510, 82 L. Ed. 734. The only requirements consistently recognized have been that the regulation not discriminate against or place an embargo on interstate commerce, that it safeguard an obvious state interest, and that the local interest at stake outweigh whatever national interest there might be in the prevention of state restrictions. Nor should we lightly translate the quiescence of federal power into an affirmation that the

national interest lies in complete freedom from regulation. *South Carolina State Highway Dept.* v. *Barnwell Bros., supra.* Compare *Leisy* v. *Hardin,* 1890, 135 U.S. 100, 10 S. Ct. 681, 34 L. Ed. 128, decided prior to the Wilson Act, 26 Stat. 313, 27 U.S.C.A. § 121, with *In re Rahrer,* 1891, 140 U.S. 545, 11 S. Ct. 865, 35 L. Ed. 572, decided thereafter."

The first requirement of valid state regulation is that it not discriminate against or place an embargo upon interstate commerce. The order here applies impartially to interstate and intrastate purchasers. Roughly half of the state's oil is refined within its boundaries. The burden, if burden there be, is shared equally by interstate and intrastate commerce.

Thus distinguish *Hood & Sons* v. *DuMond,* 336 U.S. 525; *Dean Milk Co.* v. *City of Madison,* 340 U.S. 349; *Baldwin* v. *Seelig,* 294 U.S. 511; *Pennsylvania* v. *West Virginia,* 262 U.S. 553; *Oklahoma* v. *Kansas Natural Gas Co.,* 221 U.S. 229. In each of these cases the regulations struck down positively prohibited particular interstate transactions, to allow intrastate commerce to monopolize the field. On the other hand, non-discriminatory state regulation for valid local purposes has been upheld, even though it affects, or even burdens, interstate commerce. *Milk Control Board* v. *Eisenberg Farm Products,* 306 U.S. 346; *So. Carolina State Highway Dept.* v. *Barnwell Bros.,* 303 U.S. 177; *Panhandle Eastern Pipe Line Co.* v. *Michigan Public Service Commission,* 341 U.S. 329; *Terminal Railroad Ass'n of St. Louis* v. *Brotherhood of Railroad Trainmen,* 318 U.S. 1; *Parker* v. *Brown,* 317 U.S. 341.

The "embargos" asserted by appellant (pp. 10-11, Jurisdictional Statement) do not constitute discrimination at all; and here appellant confuses cause and effect. Should appellant (1) withdraw from Oklahoma, (2) discontinue lease connections, (3) discontinue purchases in other states, (4) discontinue imports or (5) temporarily store purchased oil, its action therein is the result of its own voluntary reaction to the order. None of the cited alternatives is either the manifest purpose or the necessary result of the order. The true alternatives facing appellant are these: (1) It may make necessary minor adjustments in its crude oil purchasing program as will permit it to fulfill its local public duties, and furnish adequate facilities to the wells it serves, or (2) it may petition the Corporation Commission for relief of some adequate and equitable nature which it is within the Commission's power to grant. Neither of these alternatives raises any constitutional issue.

The second standard of valid state regulation is that it safeguard an obvious state interest, outweighing any national interest in freedom from regulation.

It is unnecessary to reiterate the state interest served by oil and gas conservation orders, and orders directed to insure equitable and ratable taking in the course thereof. *Burford* v. *Sun Oil Co.*, 319 U.S. 315. The national interest in conservation and in protecting the correlative rights of citizens parallels that of the state. *Cities Service Gas Co.* v. *Peerless Oil and Gas Co.*, 340 U.S. 179.

Thus distinguish *Southern Pacific Ry. Co.* v. *Arizona*, 325 U.S. 761, wherein state regulation was struck down as

burdening commerce without serving any useful local purpose; by comparing with *Collins* v. *American Bus Lines*, 350 U.S. 528; *Terminal Railroad Ass'n* v. *Brotherhood of Railroad Trainmen*, 318 U.S. 1, where similar state regulation, though burdening commerce, was held, as here, to bear a reasonable relation to legitimate state interests. And distinguish *Buck* v. *Kuykendall*, 267 U.S. 307, and *Bush Co.* v. *Maloy*, 267 U.S. 317, where state statutes not reasonably related to state regulation, but designed to stifle out-of-state competition were struck down, with *Lloyd A. Fry Roofing Co.* v. *Wood*, 344 U.S. 157; *Buck* v. *California*, 343 U.S. 99; and *California* v. *Zook*, 336 U.S. 804; where similar statutes, reasonably related to valid state interests, were upheld.

No substantial question involving foreign commerce, or oil imports, exists here. It is true that Gulf is the nation's largest importer of crude oil, and a controversy has raged before a federal agency as to excessive crude oil imports. It may be true that Gulf's import policy has caused its claimed surplus of domestic crude. The Oklahoma Commission has had no part in this controversy, and the level of oil imports had no bearing upon the order here involved, except insofar as imports necessarily affect market demand.

When Gulf points to anticipated "retaliatory orders" of other states, it appears to claim that the Commissions of other states will see in the order the nefarious purpose Gulf ascribes to it; and then these public officials will so violate their public trust and so abandon fairness and justice as to "retaliate." The power of a state agency to

effectuate the state's conservation policy will not be stricken down for such nebulous reasons; nor will any court travel so far into the realm of conjecture to create a burden on commerce where none exists.

Similarly, appellant's fear of incurring penalties is without substance. Though Gulf was denied a preliminary restraining order, and was denied the injunction it sought, and though Gulf during this period operated in open defiance of the Commission and its orders, the Commission has withheld enforcement or penal orders to permit Gulf to exhaust what it deems appropriate federal remedies. Gulf will receive similar fair treatment in the course of subsequent state court review.

CONCLUSION

For the reasons detailed above, appellees respectfully submit that the decision of the District Court was correct; and that this appeal presents no substantial question justify-

ing further argument. Accordingly, the judgment of the District Court should be affirmed.

Respectfully submitted,

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May, 1957.

Certificate of Service

The undersigned, counsel of record for appellees, and a member of the Bar of the Supreme Court of the United States, certify that on the 12th day of May, 1957, I served copies of the foregoing Motion to Affirm upon appellant, by mailing copies, duly addressed, postage paid, to Richard B. McDermott, Esq., Drew Building, Tulsa, Oklahoma, and to James B. Diggs, Esq., and Roger K. Allen, Esq., P.O. Box 661, Tulsa, Oklahoma, counsel of record and attorneys for appellant.

CHARLES R. NESBITT,
1515 First National Building,
Oklahoma City, Oklahoma,
Counsel for Appellees.

APPENDIX

APPENDIX "A"

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

In the Matter of the Application of Massena B. Murray, Director of Conservation, for determination of the amount of oil to be produced in the State of Oklahoma for the months of July and August, 1956, naming of certain pools and fixing pool and per well allowables for new pools.	)))))))	Cause CD No. 8315 Order No. 32809

REPORT OF THE COMMISSION

This cause came on for hearing before the Corporation Commission of Oklahoma on the 26th day of June, 1956, at 10 o'clock a.m., in its Court Room, Capitol Office Building, Oklahoma City, Oklahoma, upon the application of the Director of Conservation and pursuant to an order of the Commission setting the cause for hearing and notice thereof published as required by law.

The following appearances were entered: * * * R. E. Nipp, J. B. Diggs, C. E. Hearn, C. H. Osborne and Stewart W. Mark appeared for Gulf Oil Corporation; (balance of appearances omitted); and Floyd Green, Conservation Attorney, appeared for the Commission.

Also many operators, purchasers and takers of oil and others interested in the various sources of supply in Oklahoma were present who did not enter an appearance in this cause.

Evidence in support of this application was adduced and all parties present announced that they had no further

evidence to offer. Whereupon the Commission having considered all of the evidence and being well and sufficiently advised in the premises finds as follows:

FINDINGS

1. That notice by publication of the filing of the application herein, the time and place of the hearing thereon and the purpose of said hearing has been regularly given in all respects as required by law, and the Commission has jurisdiction of the subject matter embraced in said application and of the parties interested therein, and jurisdiction to issue and promulgate the hereinafter prescribed order.

2. That on the 29th day of May, 1956, the Commission issued its Order #32581 in Cause CD No. 8112 establishing the amount of oil to be produced in the State of Oklahoma from all of the common sources of supply for the months of June & July, 1956, at 589,000 barrels per day, which was not the same as the recommendations of 580,000 barrels per day by the Bureau of Mines.

3. That the full production of the various sources of supply in the State of Oklahoma during the months of July and August, 1956, cannot be obtained without waste as defined by the statutes of the State of Oklahoma, and the rules and regulations of the Commission; that in some pools there are not sufficient transportation or marketing facilities nor market demand for the full production of oil in each of the common sources of supply hereinafter set out in this order.

4. That in accordance with the general rules and regulations adopted by the Commission, the Commission has classified each of the common sources of supply in the State of Oklahoma into divisions known as allocated pools and unallocated pools; that such classification is necessary and proper in order that waste may be prevented and that there can be no discrimination between the various sources

of supply and in order to administer the laws of the State of Oklahoma and the orders of the Commission.

5. That the Commission has considered each common source of supply as a separate and distinct unit in determining the amount of oil that should be produced.

6. That the Commission has considered the amount of oil that can be produced from each of the allocated sources of supply in the State of Oklahoma without waste and finds that during the months of July and August, 1956, there can be produced from each of the allocated common sources of supply the amount hereinafter set out in this order, which together with the unallocated common sources of supply will amount to 602,000 barrels of oil per day in July and August, 1956, that said amount can be produced in the manner hereinafter set out in this order without physical waste and there is a market demand for same; that production at said daily rate will tend to increase the ultimate recovery of oil and prevent waste.

7. That the Commission should at this time fix the daily allowable for the months of July and August, 1956, at 602,000 barrels and which amount is allowed by this order; that the production of any amount in excess of the amount fixed herein would exceed the reasonable market demand for oil in Oklahoma during said months.

8. That all of the requirements herein are necessary in order to prevent waste and in order to protect the correlative rights of the operators, producers and owners and to be fair and equitable as between the various pools in the State of Oklahoma; that the July and August, 1956, runs shall not exceed 602,000 barrels per day.

9. That the Commission has heretofore by special order, fixed allowables for certain wells and pools in the State of Oklahoma, and that said orders should remain in full force and effect except as specifically modified herein.

10. That this order should supersede Order No. 32581 issued in Cause CD 8204 and that all special orders heretofore made by the Commission relating to well or pool allowables should remain in full force and effect, including those allowables made for certain wells in Order No. 29869 as modified herein.

11. That the allowable for the months of July and August, 1956, should be as hereinafter shown for the reason that oil and refined products in storage above ground have reached the point where waste is likely to be caused, and that the allowable production heretofore fixed in Oklahoma is more than sufficient to take care of the reasonable consumptive market demand.

12. That certain exceptions should be made to this order in instances where a cut-back in allowable production to conform to the order would result in doing material injury or damage to the well.

13. That in fixing the allowable hereinafter set out, the Commission had taken into consideration by purchasers, the forecast of the Bureau of Mines of 580,000 barrels, and all other information that would assist it in arriving at the market demand for oil in Oklahoma.

14. *That the following pools should be placed under proration and should be classified as allocated pools*: (list omitted).

15. That the following named five (5) pools should be allowed to produce at capacity in order to furnish heavy oil for the Stroud Refinery, which oil is not desirable for purchases by pipe line companies: Lafoon S.E., Wilcox; Lafoon, Wilcox; Peck, Wilcox; Red Bank, Dutcher; and Wilzetta S., 2nd Wilcox.

16. That by Order No. 32581, the top allowable for wells in the "unallocated areas" was fixed at 21 barrels of oil per day; this amount should be set at 25 barrels, the top

allowable for wells in the "unallocated areas", all as more fully set out hereinafter in the order.

17. That all wells in the "unallocated area" should be allowed to produce on a lease basis and all wells in the "allocated area" shall be produced on a well basis, unless otherwise ordered by the Corporation Commission.

18. That in order for the Corporation Commission to be kept advised of the production in Oklahoma, all purchasers of oil should file with the Conservation Department not later than 7 o'clock a.m., on Wednesday of each week, the total amount of oil taken from leases by such purchaser or taker during the preceding calendar week.

19. That the operators in all of the pools in the State of Oklahoma should produce their wells, and the purchasers should take oil therefrom in such manner as to insure ratable taking in every pool in the State.

20. That all purchasers and/or takers of crude petroleum should take oil ratably from all wells and leases within the State of Oklahoma in compliance with the statute and a previous order of this Commission, and that no purchaser should be allowed to discriminate as to the purchaser of petroleum as between any wells or pools within the State of Oklahoma during the period provided for in this order.

21. That 5 days underproduction should be allowed to be made up during the second following month, provided however, that in the event such underage exceeds 5 days current allowable, then such underproduction shall be made up as herein provided.

22. That underage due to purchaser proration by Anderson Prichard in the Cement Pool during the month of December, 1955, January, February, March, April, May and June, 1956, be held in abeyance and run at any time that pipe line and marketing facilities are available, and

that the underage due to purchaser proration due to the inability of the Rock Island Oil and Refining, Cities Service Oil Company, (Cherokee Pipe Line), and under Order #32280 for the month of May, 1956, the underage due to purchaser proration by the Cities Service Oil Company (Cherokee Pipe Line) to take the full amount of oil permitted under Order #32018 for the month of April, 1956, should be held in abeyance and be permitted to be run at any time pipe line facilities and the market conditions permit. Provided, however, that the operator having such underage in the allocated pools served by the companies prorating during these months furnish in duplicate to the Oil & Gas Conservation Department an affidavit setting out the name of the operator, the lease name, location of the well, the name of the allocated pool, and the amount of underage accruing during the periods in which purchaser proration was in effect.

23. (a) That individual wells in the *"unallocated"* pools may be granted full production if such wells produce salt water in the amount of 75% or more. However, that no exception should be granted because of producing salt water in excess of 75% in *"allocated"* areas without a specific order from the Corporation Commission after notice and hearing, with the exception of the Oklahoma City, Wilcox, and the Oklahoma City, Simpson, allocated pools, which should be permitted to produce at capacity where the wells make 75% or more water. That in order to qualify for full production, it will be necessary for the operator to test all wells for which exemption is requested for a period of seven days.

(b) That the test should have been made *during the month of May, 1956*, and reported to the Oil & Gas Conservation Department on Form 1013 in *duplicate;* and that the Oil & Gas Conservation Department should be permitted to authorize the purchaser, or pipe line, to run the full amount of production if the results of the test indi-

cate 75% or more of salt water. That no pipe line, taker, or purchaser should take, or run, in excess of the minimum allowable from any lease until such authority has been received from the Oil & Gas Conservation Department. That such affidavits should remain in force and effect for a period of six months, or until otherwise ordered by the Commission. Any operator desiring to avail himself of the provisions of this order after May 1st will submit a test, as outlined above. That such tests should be effective the date the report of such tests are received by the Oil & Gas Conservation Department if subsequent to May 31, 1956.

24. That all oil used as load oil or any well treating process should not be charged to production when such load oil is thereafter produced, provided however, that the operator file an affidavit on forms provided by the Corporation Commission as to such production of load oil.

25. That there being numerous water flooding projects authorized by the Corporation Commission in the State of Oklahoma producing oil under secondary recovery methods and any drastic curtailment of production would result in waste, they should be permitted to produce at the MINIMUM EFFICIENT RATE and not to exceed the rate set out in affidavits provided for by the Corporation Commission; and that the filing of these affidavits on forms furnished by the Conservation Department should constitute authority to the pipe line company to run the oil set out in the affivadit which is concluded to be the MINIMUM rate at which projects would operate efficiently without detriment to the formations or cause waste. That such tests be made on water flood projects during the month of *May, 1956*, and the information furnished on "WATER FLOOD PRODUCTION REPORTS" (Form No. 1012), setting out pertinent information regarding the particular flood. Such report should be sworn to, one copy being filed with the Oil & Gas Conservation Department, and the other copy to the pipe line, purchaser or taker of oil. That such affidavit

should be effective June 1, 1956, and remain in effect until otherwise ordered by the Corporation Commission, after notice and hearing, and tests taken after May 31, 1956, should be effective the date such reports are filed with the Oil & Gas Conservation Department and the purchaser or pipe line.

26. That there are secondary recovery projects authorized by the Corporation Commission in which water, gas, or air is used as a medium for the production of oil; that any drastic curtailment of production by this type of operation might result in waste, and therefore said project should be permitted to operate at a MINIMUM EFFICIENT RATE as for water flooding projects, as stated above; and that tests should be taken during the month of *May, 1956*, on "WATER FLOOD PRODUCTION REPORTS" (Form 1012). Such reports should be sworn to, one copy being furnished the Oil & Gas Conservation Department, and the other copy to the purchaser, taker or transporter of oil; that such tests should be effective *June 1st, 1956*, and remain in force and effect until otherwise ordered by the Corporation Commission, after notice and hearing, and that such affidavit should constitute authority for the taker, purchaser or transporter to run the amount of oil concluded to be the MINIMUM EFFICIENT OPERATING RATE. That the effective date of the tests taken subsequent to May 31, 1956, should be the date the report of such tests are received by the Oil & Gas Conservation Department and the purchaser or pipe line.

27. In addition to the secondary recovery projects mentioned above, there are certain projects using gas or gas and air as energy, as a medium to produce oil authorized by the Corporation Commission orders. These projects should be permitted to produce 25 barrels of oil per well, counting both oil wells and injection wells to compute the total amount of oil to be permitted to be produced and run from the lease.

28. That the allowable restriction should apply where the leases are being water-flooded and are under secondary recovery by previous orders of the Corporation Commission as hereinafter provided.

29. That the Texas Company's Mulkehay Well No. 3, which has heretofore had an allowable of 17 barrels per day by special order of the Commission because said well had been whipstocked in drilling and is bottomed at 135 feet off center, should have its allowable production set at 20 barrels per day.

30. That because of the abnormal amounts of salt water being produced from the Magnolia C. H. Owens No. 1 well located in the NE SE NW of Sec. 25, T4N, R3W, Southwest Maysville Field, Garvin County, Oklahoma, said well should be allowed to produce at capacity.

31. That the Little Chief West, Bartlesville Pool, located in Osage County, Oklahoma, should be granted an allowable of 30 barrels per day, 5 barrels of which should be charged to over-production to said wells and hereafter made up as provided for by future orders of the Corporation Commission.

32. (a) THAT PRODUCTION OR POTENTIAL TESTS should be made on all individual wells in the allocated pool (for which no gas/oil ratio test is required by special order of the Commission). That such tests should be taken during the period *JUNE 1st TO JUNE 30th, 1956, inclusive*, on all such allocated wells, and that any offset operator should be permitted to witness the well tests.

(b) The test should be made for a period of not less than six (6) hours and more than twenty-four (24) hours, computed and reported at a 24-hour rate. Such tests to remain in full force and effect for six months, or until otherwise ordered by the Commission.

(c) That the test data should be transcribed on IBM FORMS prepared and furnished by the Oil & Gas Conservation Department, and that such IBM FORMS were distributed the last week of May, 1956, to the operators.

(d) That the Oil & Gas Conservation Department IBM Forms indicated the name of the operator, the pool number, the lease name, and the well number; that this form contains headings for five columns carrying the caption: Column 1—Location; Column 2—Formation; Column 3—Depth; Column 4—Potential; Column 5—Date.

(e) That the operator should list under the appropriate column headings the proper data, and that the potential should be shown to the nearest even barrel, and that such report should be subscribed and sworn to by the individual making the report.

(f) That the result of these tests should be furnished the Oil & Gas Conservation Department as soon as possible after taking. That these tests should become effective July 1, 1956, and remain in force and effect for six months, or until otherwise ordered by the Corporation Commission. That no well should be granted an allowable until tests are taken and reports filed by the Oil & Gas Conservation Department.

(g) That any new wells in allocated pools coming onto production after July 1st, 1956, should take a production test, as outlined above, not earlier than seven (7) days, nor later than thirty (30) days after completion of the well. That the result of the production or potential test should be furnished on Form 1029, subscribed and sworn to and furnished the Department as soon as possible after completion of the test. That the Oil & Gas Conservation Department should be permitted and authorized to clear a sufficient amount of oil to permit the taking of tests in accordance with this order, and that such oil cleared should be charged to the allowable, and that no allowable

should be granted any well that has not taken tests within 30 days after completion, and that the pipe line, taker, or transporter of oil should cease to run oil from such a lease until written or telegraphic permission has been received from the Oil & Gas Conservation Department.

(h) An operator desiring to retest oil wells should furnish the test information on Form 1029, and the well should be tested in the manner prescribed above. The effective date of the new test should be the date on which test was completed and should remain in effect the remaining portion of the period, or until new test has been taken.

33. On leases in which there are producing wells from the "unallocated" zones and production from the "allocated" zones, when it is believed necessary the operator of such a lease, in addition to the test prescribed above, should be required to test the wells in the "unallocated" zones, also. These tests should be taken for a period of twenty-four (24) hours and all data transcribed on PRODUCTION or POTENTIAL, FORM NO. 1029, in duplicate, the original copy transmitted to the Oil & Gas Conservation Department and the duplicate to the pipe line or purchaser. Such tests should remain in force and effect until otherwise ordered by the Corporation Commission.

34. That the operator of wells or leases producing from "allocated" or "unallocated" zones should furnish the pipeline company, immediately after the close of each calendar month, a report showing the amount of oil run from "allocated" wells and/or "unallocated" wells or leases in order that the pipe line or purchaser may use such information in reporting oil purchases from the several "allocated" or "unallocated" leases or wells, on Form No. 1011 to be furnished by Oil & Gas Conservation Department.

35. That to determine the date of first production and the amount of oil that should be allowed for well or wells

in allocated or unallocated zones that have been dually completed in two separate zones, the purchaser and the Conservation Department should use the date on which an order was granted by the Corporation Commission as the date of first production of the second zone to compute the allowable for each well with the exception of the Golden Trend Gibson, Pool #414, and the Golden Trend Hart, Pool #420, covered by Order No. 27182, and the Purdy Northeast Springer, Pool #867, and the Golden Trend Hart, Pool #420, covered by Order No. 27640, and the Bradley Upper Simpson, Pool #74, and the Bradley Lower Simpson, Pool #76, covered by Order No. 29201, and the Madill Northwest Bromide, Pool #649, and the Madill Northwest McLish, Pool #652, covered by Order No. 30866, the date for the establishing of allowables for wells in the pools covered by the orders mentioned above should be the date the operator notifies the Oil & Gas Conservation Department of the completion of such zones.

36. That the allowed amount of oil to be run from well, or wells, for which "Testing and Discovery" allowable is granted under Rule 304, Order No. 19334, should be computed by multipying the number of permitted days by 150 barrels, and that the purchaser and Oil & Gas Conservation Department should set up the allowable for such wells by indicating the date that such allowable commenced, and the date terminating the testing period, and that the allowable thereafter should be only the amount of oil indicated by the current allocation order; if such well is in an allocated pool, the amount of oil indicated for this pool will be assigned the well. If such well is in an unallocated area, then the minimum or unallocated allowable should be assigned this well for the remaining portion of the period, or until otherwise ordered by the Corporation Commission, and that no underage should accrue to any well granted "Testing and Discovery" allowable due to the failure of the oil not being run on or prior to the termination date of the testing period and the purchasers, takers,

and transporters should not run any oil above the minimum allowable herein set out until they have received written authority from the Oil & Gas Conservation Department.

37. The Corporation Commission finds that there are many allocated leases in the various pools in the State of Oklahoma that produced below the minimum allocated allowable, and that the operations of the lease and the pipe line taking the oil are such that tanks are not full until the end of the month. The Commission finds that this oil has been legitimately produced, but due to the mechanics of the operation could not be run in the proper month. The Commission finds that to eliminate such inequities that the Oil & Gas Conservation Department should be authorized to permit the running of such oil in the succeeding month, or the second succeeding month, if an operator shows that the oil was legally produced and that the pipe line would not run a split tank; and further furnish information regarding the capabilities of the well, the date produced, the name of the lease, the well number, the amount of oil in storage, and the pipe line running the oil. Such statement should be presented to the Commission in the form of an affidavit.

38. That operators, producers, purchasers and takers of oil should make periodic reports of production and oil runs from the various leases throughout the State, and that purchasers should also make such report as is required by the General Rules and Regulations, and that such reports should be filed on or before the date indicated in the General Rules and Regulations.

39. That the operator or producers should file a report on form prescribed by the Commission, Form 1008, with the purchaser, taker or transporter of oil, listing the number of wells, the lease name, and the productive capacity of the unallocated wells, the report made to the appropriate purchaser one time, and modified when necessary by the addition of new wells and the plugging of old wells. That

such reports should have been filed before May 15, 1956, and the purchaser or taker should not run oil from any well, or wells, in unallocated fields or areas until Forms 1008 have been filed or other authorized reports filed in lieu thereof.

40. That for the past several months we have had pipe line or purchaser proration applicable to many of the wells and pools in the state; that the under-production accumulated to the various wells because of pipe line proration now exceeds 100,000 barrels and will probably result in the violation of correlative rights in that many of the wells will never be able to produce the accumulated underage. That the only way that the correlative rights of the various operators and royalty owners might be protected is for the takers and purchasers to take the amount fixed by this order, and that therefore this order should provide that all takers and purchasers shall take the amount fixed in this order unless in an extreme emergency an application is filed for relief from that provision and permission is granted by the Corporation Commission to take less than the amount provided by this order after notice and hearing as provided by law.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of Oklahoma as follows:

1. That on and after 7 o'clock a.m., on the first day of July, 1956, and for the months of July and August, 1956, or until otherwise ordered by the Commission, the production from each well and/or lease of the "allocated" common sources of supply in the State of Oklahoma, which is not now over-produced, minus any over-production charged to it as of the 1st day of June, 1956, shall be restricted as hereinafter shown:

Pool No.	Classification Allocated Pools	County	Estimated Daily Pipeline Runs	July & August 1956 Per Well Allowable	Unit Daily Allowable
7	Agra W., Cleveland	Lincoln	675	25	
8	Agra Ext., Bartlesville	Lincoln	25	25	
2	Allen Dist. Ext., Up. Booch	Hughes	25	25	
5	Alma N., Culbertson	Stephens	86	25	
3	Alma N., Springer	Stephens	867	28	
6	Antioch N., Viola	Garvin	35	31	
9	Antioch N.E., Simpson	Garvin	134	28	
10	Antioch N., Deese	Garvin	33	28	
18	Antioch S.W., Simpson	Garvin	44	37	
13	Antioch, Elmore Unit (106)	Garvin			1,819
12	Antioch S.W., Gibson Unit (238)	Garvin			6,387
21	Apache, Wilcox	Caddo	890	25	
27	Ara N.W., Pickens	Stephens	3,156	29	
24	Ara, Springer	Stephens	1,180	26	
25	Ardmore, S.W., Tulip Creek	Carter	445	25	
26	Ardmore S.W. Ext., McLish	Carter	55	25	
33	Asher N., Earlsboro	Pottawatomie	25	25	
34	Asp W., Skinner	Noble	29	25	
28	Ardmore S.W. Ext., Bromide	Carter	25	25	
30	Arno W., Prue	Creek	465	25	
39	Avery, Prue	Payne	43	43	
36	Avoca, Senora	Pottawatomie	55	25	

(Balance of alphabetical list of pools omitted)

* * * * * * * * * *

ALLOCATED	292,339
UNALLOCATED	309,661
TOTAL	602,000

NOTE: *Pools marked by an asterisk (*) require individual gas/oil ratio tests on each well as prescribed by special pool rules.
Wells in all other pools—required to take production or potential tests as hereinafter set out in this order.

2. NEW WELLS — EFFECTIVE DATE OF ALLOWABLE.

(a) Allowables for new wells brought on for production during the months of June and July, 1956, will be assigned the allowable for the pool in which such wells were completed, as set out in this order.

(b) Wells completed in ALLOCATED POOLS will be assigned the allowable as indicated in Paragraph 1 of this order.

(c) Wells completed in the *unallocated pools* or areas will be assigned the unallocated allowable of 25 barrels per well per day.

(d) The effective date for establishing allowables for new wells will be the date the well first produced through permanent wellhead connections into stock tanks, except as modified herein, or by special order of the Commission.

(e) The effective date for *dual completed wells* will be the date on which the Corporation Commission authorized such dual completion by order; provided, however, that wells dually completed in the Golden Trend Gibson, Pool #414, Golden Trend Hart, Pool #420, Order 27182; Northeast Purdy Springer, Pool #867, and Golden Trend Hart, Pool #420, Order 27640; the Bradley Upper Simpson, Pool #74, and Bradley Lower Simpson, Pool #76, Order 29201; the Madill Northwest Bromide, Pool #649, and Madill Northwest McLish, Pool #652, Order 30866, the effective date will be the date the wells were dually completed.

3. UNALLOCATED LEASE ALLOWABLES — ALLOCATED PER WELL ALLOWABLES.

(a) All wells completed in and producing from an "unallocated" Pool or area shall be allowed to produce on a lease basis. The allowable will be computed by multiplying the total number of "unallocated" producing wells by 25 barrels per day, plus any increase due to extra allowable permitted by SALT WATER EXEMPTION set out in Paragraph 15 of this order, and further augmented by

an additional allowable granted by any special order of the Corporation Commission.

(b) FORM 1008, OPERATORS' LEASE REPORT—UNALLOCATED.
Operators having unallocated leases (excluding water floods) will report on Form 1008 the lease name, the number of producing wells, the lease capacity of the unallocated wells, indicating whether daily or monthly rate. This report will be furnished *to the purchaser, or taker, of oil only,* and *one time only,* except when it becomes necessary to amend the report by adding new wells or deleting wells plugged. If such reports have not been filed by May 15, 1956, the purchaser, or taker, of oil shall cease running oil until such reports have been filed. Unallocated wells permitted to produce at capacity because of salt water exemption for which Form 1013 has been filed, should be entered on this form *by individual wells,* with the notation "Salt Water Affidavits on Form 1013 have been filed."

(c) Individual wells producing from an *"allocated" pool* or zone will be granted the amount of oil as provided in Paragraph 1, of this order, plus or minus any increase or decrease provided for by this order, or any special order of the Corporation Commission, and the PURCHASERS, TAKERS OR TRANSPORTERS are required *to run only* the *amount of oil indicated by the IBM PURCHASERS' REPORT,* or by special authorization of the Oil & Gas Conservation Department.

4. REPORTS — OIL RUNS.
(a) All operators, producers, purchasers and takers of oil, where the production is *"allocated"* by a Commission order, shall file reports as required by

this order and the *General Rules and Regulations of the Corporation Commission*, and on or before the date indicated.

(b) Operators, producers, purchasers, takers or transporters of oil from "unallocated" areas will file all reports as required by this order. *The purchaser or taker of oil* will file reports for "unallocated" runs (Rule 701, General Rules and Regulations). Copy of Tax Commission report is acceptable.

5. PURCHASER WEEKLY REPORT.
REPORT OF THE AMOUNT OF OIL RUN FROM LEASES SHALL be made by all takers or purchasers of crude oil to the Oil & Gas Conservation Department not later than 7:00 a.m., on Wednesday of each week. This report may be made by telephone, telegram or letter, indicating the gross amount of oil taken from leases for the preceding week from Sunday through Saturday.

6. VIOLATIONS — PRODUCTION AND RATABLE TAKING.
NO OIL PRODUCED IN VIOLATION OF THIS ORDER SHALL BE PURCHASED OR TRANSPORTED BY ANY PURCHASER OR PIPE LINE AND THE PURCHASERS ARE DIRECTED TO PURCHASE ONLY THE AMOUNT OF OIL ALLOWED BY THIS ORDER; PROVIDED FURTHER, THAT ALL PURCHASERS SHALL PURCHASE RATABLY AS BETWEEN *ALL WELLS WITHIN A POOL* AND ALL POOLS WITHIN THE STATE OF OKLAHOMA, AS PROVIDED BY LAW.

7. SAVING CLAUSE.
That the several provisions of this order are separable and the validity of any one is in no wise dependent

upon the validity of the order. If any provision, section, paragraph or clause in this order shall be held to be invalid or void for any reason, the same shall in no manner affect the validity of the other provisions thereof.

8. EFFECT PREVIOUS ORDERS — OVER-PRODUCTION TO BE MADE UP.

The order, rules and regulations of the Commission heretofore promulgated, except as herein specifically modified and amended, shall continue in force and effect until otherwise ordered by the Commission, and this order shall in no manner be construed to release or relieve any operator from making up any and all overproduction of oil from any well or lease in excess of that allowed by previous orders or rules of the Commission.

9. PERIOD OF ORDER.

That this order shall remain in full force and effect until further order of the Corporation Commission made at a regularly conducted market demand hearing.

10. ENFORCEMENT OF ORDER.

(a) The Oil & Gas Conservation Department is hereby directed to enforce the provisions of this order and to shut in any well that is being over-produced in violation of this order, or any previous orders of the Commission.

(b) The Oil & Gas Conservation Department is specifically directed to assign no allowable to any well, or wells, that have *not* been tested as required by this order, Order No. 30782, Order No. 30915, Order No. 31087, Order No. 31510, Order No. 31778, Order No. 32018, Order No. 32280, Order No. 32581, or any specific Corporation Com-

mission orders providing for gas/oil ratio tests and field rules now in effect.

(c) The Conservation Department is directed to assign no allowable to any well which has not been tested pursuant to the provisions of the orders as enumerated above, and shall require the pipe line or purchaser to cease running oil until the results of such tests have been filed with the Oil & Gas Conservation Department, provided however, that sufficient oil may be cleared by the Oil & Gas Conservation Department in order that an operator may have sufficient tank room to conduct the tests mentioned above.

11. FIVE DAYS UNDERAGE OR LESS.
The 5 days under-production or less shall be allowed to be made up during the second full calendar month in which such underage occurs, such underage will be [illegible] the current per well rate allowed for the particular pool for the month in which said 5 days underage is to be made up. In the event that the underage is in excess of 5 days computed on the current pool allowable, then no portion of the underage will be permitted to be run under this order and all such underage will be held in abeyance, and such underage may be produced and run only by special order from the Corporation Commission after notice and hearing.

12. UNDERAGE DUE TO PURCHASER PRORATION, AND METHOD OF REINSTATING.
UNDERAGE IN ALLOCATED POOLS ONLY, resulting from purchaser proration, shall be held in abeyance and may be made up when the purchaser has pipe line and marketing facilities available under the following conditions:

(a) Underage accruing in the allocated pools in the Cement Field, due to purchaser proration by An-

derground during the months of December, 1955, January, February, March, April, May and June, 1956.

(b) Underage accruing due to the inability of the Rock Island Oil & Refining Company to take the full allowable during the month of April, and the Cities Service Oil Company (Cherokee Pipe Line) to take the full allowable during the months of April and May, 1956.

(c) That the operator furnish or have furnished this Department an affidavit in two copies setting out the name of the operator, the lease name, well number, the legal description, the name of the ALLOCATED POOL, (and pool number), the name of the formation, the name of the pipe line or purchaser running the oil, the amount of underage, and the month in which underage accrued.

(d) Only the underage outlined in this paragraph (and in Paragraph 11—Five Days Underage) will be considered by the Oil & Gas Conservation Department and no purchaser is authorized to run any underage except as established by the *affidavit approved by this Department*, or underage granted by a specific Corporation Commission order after notice and hearing.

13. SPLIT-TANK UNDERAGE—ALLOCATED LEASES —REINSTATEMENT.

(a) The Oil & Gas Conservation Department is hereby authorized to reinstate underage (produced and in leased storage) where each of the wells on the particular lease are producing below minimum allowable, and when it is necessary for the wells to produce for longer than one month to fill a tank, and where the pipe line or taker refuses to run

less than the tank; which operations do not permit the running of the oil during the month in which the oil was produced.

(b) AFFIDAVITS FOR REINSTATEMENT SPLIT-TANK UNDERAGE.
In order to reinstate underage in *"allocated"* pools occasioned by conditions cited above, operator shall furnish the Oil & Gas Conservation Department an affidavit containing the following: Name of the operator; name of lease; well numbers; pool name and number; producing formation; potential of each individual well (at 24-hour rate); the amount of oil produced and in storage; period in which oil was produced; name of pipe line, and reason why oil was not run during allocation period.

(c) PROCEDURE—RESTRICTIONS—REINSTATEMENT.
When the Oil & Gas Conservation Department finds that split tank underage reported (on affidavits) does not exceed total potential of wells multiplied by number of days of month, and the operator has fully complied with the rules, regulations and orders of the Commission, the Conservation Department may authorize running of such oil in the succeeding month in which oil was produced, or the second succeeding month in which oil was produced. Such authority shall be in writing. No underage shall be run by pipe line, taker or transporter until such authority has been received. Oil so authorized and run will be charged against the lease allowable for the appropriate month or months.

14. CREDIT—FRACK OR LOAD OIL—FORM NO. 1031. THAT ALL LOAD OIL USED IN FRACTURING or other methods of well completions, (not produced from

the same lease), shall not be charged against said well, the well shall be allowed to produce the current monthly allowable in addition to such load oil, provided however, the operator has filed with the Conservation Department and the Crude Oil Purchaser an affidavit showing the amount of load oil, the origin, and the disposition of same on forms to be supplied by the Corporation Commission.

15. CAPACITY PRODUCTION—UNALLOCATED AREAS—75% WATER.
Any *individual* well completed in an "unallocated" pool, zone or area, and individual wells producing from the Oklahoma City Wilcox and the Oklahoma City Simpson Pools will be permitted to produce at full capacity, provided that such individual wells produce 75% or more of salt water, and provided further that the operators or owner of such wells conducts tests and makes reports as hereinafter set out.

16. SALT WATER EXEMPTION TESTS, FORM 1013 (NEW TESTS REQUIRED MONTH OF MAY, 1956).
In order to qualify for full production due to excessive salt water conditions of wells producing from UNALLOCATED pools, zones, or formations, including the Oklahoma City Wilcox and the Oklahoma City Simpson, the owners or operators of such wells shall make a test, and report as set out below:

(a) Test each individual well for which full production is desired for a period of seven consecutive days, *determining each day the amount of oil, and the amount of salt water produced.* Tests to be taken during the month of May, 1956.

(b) Furnish on Form 1013 (SALT WATER EXEMPTION AFFIDAVIT) in duplicate, (both copies to the Oil & Gas Conservation Department), the result of such *individual well* tests, noting spe-

cifically the amount of oil, and the amount of water produced each day, giving dates well was tested. This affidavit will be subscribed and sworn to by the person, or persons, having full knowledge of such tests. The tests provided herein may be witnessed by any operator.

(c) Any well in the UNALLOCATED zone for which exemption is desired may be tested after May 31st and be authorized full production provided that such well produced 75%, or more, of salt water of the gross fluid produced, provided, that such operator furnishes the tests as stated above.

(d) Pipe lines, purchasers and transporters are expressly prohibited from running oil in excess of 25 barrels per day until such taker has received from the Oil & Gas Conservation Department the approved copy of the SALT WATER EXEMPTION AFFIDAVIT, FORM 1013, for the particular well.

(e) *New tests shall have been taken during the month of May, 1956,* and the Oil & Gas Conservation Department shall furnish the purchaser or taker an approved duplicate copy of such test, authorizing the running of the full production of the particular well. *If the purchaser or taker of oil has not received a new approved copy by June 15th, 1956, such purchaser will run only 25 barrels per day* from such well until he has received the approved duplicate copy of the affidavit for the particular well.

17. SECONDARY RECOVERY PROJECTS—ALLOWABLES.

The restrictions on production provided for in this order shall not apply to leases where secondary recovery operations are being conducted by: (a) *Water*

Flooding, (b) *Gas Injections*, (c) *COMBINED Water and Gas Injections*. Such secondary recovery operations which have been authorized by Corporation Commission order shall be permitted to produce oil in the amount as hereinafter provided.

18. WATER FLOOD PRODUCTION REPORT — FORM 1012 (NEW TESTS REQUIRED MONTH OF MAY 1956).

(a) Water Flood Projects *AUTHORIZED BY SPECIFIC CORPORATION COMMISSION ORDER* will be permitted to be produced as established by such order, and each operator of each such unit shall make an affidavit (Form 1012) as hereinafter set out. Operator will consider his own unit in making such affidavit; provided however, where authority has been granted by the Corporation Commission for several units, or operated jointly, and such projects being contiguous and are considered to be an enlargement, may combine such project in figuring the minimum operating rate. Such tests and data shall be the results of tests taken during the month of May, 1956.

(b) Each operator of such water flood project shall make an affidavit on Form 1012, WATER FLOOD PRODUCTION REPORT, giving the following information: Name of operator and address; name of pool; name of pipe line or purchaser running the oil; name of formation and average test; location of the project (section, township and range); number of acres in project; number of input wells; number of oil wells; average daily amount of oil produced; date test made, and the daily rate to be considered, and the MINIMUM EFFICIENT OPERATING RATE of the project. If gas is used in conjunction with water in such operation, indicate number of gas input wells, and the daily

average amount of gas injected in conjunction with water.

(c) New tests shall be taken, and new affidavits on Form 1012 shall be submitted after May 31st, where there is any material change in the unit, such as additional wells, input or oil wells, enlargement, wells plugged, or the cessation of the operation of a unit.

(d) NEW PROJECTS authorized by the Corporation Commission after May 31st shall be reported on Form 1012, as outlined above, before they will be permitted to produce at the MINIMUM EFFICIENT OPERATING RATE.

(e) Pipe lines, purchasers and transporters shall not run oil from any water flood project after June 15, 1956, or until duplicate copy of Form 1012 of the new tests taken has been received. The *effective date* of tests taken after May 31st, 1956, shall be the date the reports (Form 1012) of such tests are received by the Oil & Gas Conservation Department and the purchaser or taker of the oil.

19. SECONDARY RECOVERY PROJECTS — GAS OR AIR USED — NEW TESTS MADE 1956.

(a) Operators who are conducting secondary recovery projects, authorized by Corporation Commission order, using gas or air solely to maintain pressure, shall make a *new test during the month of May* on such projects, using Form 1012 (WATER FLOOD PRODUCTION REPORT). (Make appropriate changes on form to show proper information).

(b) Reports shall be made in duplicate, sending one copy to pipe line, purchaser or transporter of oil, the other copy to the Oil & Gas Conservation Department not later than June 15, 1956.

(c) The allowables for projects where gas and air are alone used will be computed by multiplying the total number of wells on the project (injection wells and oil wells) by 25 barrels by the number of calendar days. The result of such computation will be the allowable for the project.

(d) Any new projects or retests on old projects subsequent to June 1st, authorized by Corporation Commission order, shall be tested and reports made as provided above. The effective date of tests taken after May 31st, 1956, shall be the date the report (Form 1012) of such tests are *received* by the Oil & Gas Conservation Department and the purchaser or taker of the oil.

(e) Pipe lines, purchasers, transporters or takers of oil are prohibited from running oil from any such secondary recovery project until a copy of the affidavit, Form 1012, noted above has been received, and shall not run in excess of the amount of oil as computed by the application, the method outlined in Paragraph (c) above.

20. EXCEPTIONS TO THIS ORDER ENUMERATED BELOW. (Omitted)

21. LITTLE CHIEF POOL.

(a) Little Chief West, Bartlesville, Pool No. 568, Osage County, is assigned an allowable of 30 barrels per well per day for the months of July and August, 1956, as per this order.

(b) Five barrels of such allowable shall be charged as over-production, and shall be made up as hereinafter promulgated by orders of the Corporation Commission.

[APPENDIX]

22. JUNE PRODUCTION TESTS—ALLOCATED POOLS —IBM FORMS.

(a) All wells in allocated pools (not requiring GOR tests by special order) shall have been retested in the month of *JUNE, 1956*. The wells shall have been tested, and reports filed as set out below:

(b) Each individual well tested for not less than 6 hours and not more than 24 hours, and the potential reported at a daily rate (24 hours). Any operator may witness the testing of any wells.

(c) The results of the tests transcribed on blank IBM forms furnished by the Oil & Gas Conservation Department for this specific information, IBM forms furnished operator during the last week of May, 1956.

(d) Printed on the IBM forms furnished by this Department will be: Name of operator; pool number; lease name and well number, and five columns headed as follows:

Column (1)—Location (Legal description of well).

Column (2)—Formation (Name of producing formation).

Column (3)—Depth (Depth of producing formation).

Column (4)—Potential (24-hour production rate to nearest barrel).

Column (5)—Date (Date test was completed).

(e) The five columns above filled in with pertinent information, and subscribed and sworn to by the operator, or authorized representative, utilizing jurat stamp at the bottom of page. Tests taken during the month of JUNE, 1956, and furnished

the Oil & Gas Conservation Department as soon after as possible. These tests will be effective July 1st, and remain in force for six months, or until otherwise ordered by the Corporation Commission.

(f) No well will be assigned an allowable if tests have not been received by the Oil & Gas Conservation Department prior to July 1, 1956, except as provided in Paragraph 22(e) of this order.

(g) NEW WELLS brought onto production after July 1st, in allocated pools, will take a production test of not less than 6 hours and not more than 24 hours not sooner than 7 days nor later than 30 days after completion of the well. Results of such tests will be furnished this Department on PRODUCTION AND POTENTIAL TEST, FORM 1029. The effective date for the computing of the allowable for new wells will be the date the well was finally completed.

(h) All new wells in allocated pools will be given a minimum allowable until tests have been taken, or for a period not greater than 30 days after completion of the well.

(i) At the expiration of the 30 days, if tests have not been taken and reports filed with the Oil & Gas Conservation Department, no allowable will be assigned, and the taker or purchaser *will not run oil* from such a well until authorized by the Oil & Gas Conservation Department.

(j) IBM OPERATORS' STATEMENT and IBM PURCHASERS' STATEMENT will indicate under the heading "Type of Well" the figure "3", denoting that no test was taken and no allowable assigned. Purchasers or takers are instructed to run no oil

from wells for which tests have not been taken, or for any well that has no net allowable shown on IBM reports. No well shall be granted underage resulting from the failure to have taken tests in compliance with this order except by special Commission order after notice and hearing.

(k) The Oil & Gas Conservation Department, after determining the necessity, may authorize the purchaser, transporter, or taker, to remove from lease tankage a sufficient quantity of oil to permit the testing of wells as required by orders of the Corporation Commission; that such *clearance will be authorized in writing,* and the amount of oil cleared will be charged against the wells, and such overage be made up immediately after the conclusion of the test.

(l) OLD WELLS which have not been tested during the month of June, 1956, will *not be granted an allowable* until such tests have been taken and the reports prescribed above have been filed with the Oil & Gas Conservation Department, and no purchaser, taker or pipe line will run oil until authorized by the Oil & Gas Conservation Department. The effective date of the allowable for such a well will be the date the test was completed.

23. RETESTS AND EFFECTIVE DATE OF TESTS. The effective date of *retests* of wells in an "allocated" pool (for which no special order requires gas/oil ratio tests) will be the date of the completion of the retest. The tests will be conducted in the same manner as for a new well and the results of test on Form 1029 will be furnished the Oil & Gas Conservation Department as soon as possible.

24. TESTING AND DISCOVERY ALLOWABLE. Any oil claimed to be a discovery and testing allowable, under Rule 304, will not be run from any well

until authorized by the Oil & Gas Conservation Department by wire or letter. However, the purchaser, transporter, or taker may *not* run in excess of 25 barrels per day from such well until written authorization has been received. No underage will accrue due to failure to remove oil from lease.

25. OPERATORS' REPORT OF RUNS BY SEPARATE COMMON SOURCES OF SUPPLY MULTI-ZONE LEASES.
    (a) Not later than 5 days after close of calendar month, operators having multi-zone leases will prepare and furnish a detailed report by common sources of supply, allocated or unallocated, to the purchaser or taker in order that each zone will be credited with the proper amount of oil produced on such multi-zone leases.

    (b) Data required in the above paragraph will be recorded on MULTI-ZONE LEASE RUN REPORT, FORM NO. 1011, and sworn to by the person or individual responsible for such reports.

26. That all takers and/or purchasers of crude oil in Oklahoma shall take the full amount of oil allowed by this order unless relieved therefrom by this Commission after notice and hearing as provided for by law.

DONE AND PERFORMED this 26th day of June, 1956.

CORPORATION COMMISSION OF OKLAHOMA

_____Chairman
_____Vice-Chairman
_____Commissioner

ATTEST:

_____
Secretary

(FOR SIGNATURES SEE ORIGINAL OF)
(THIS ORDER FILED WITH COMMIS-)
(SION SECRETARY.)

INDEX.

PAGE

Brief Opposing Motion to Affirm 1

There are facts of this case which distinguish it from all prior instances where federal abstention has been applied to the review of state administrative orders regularly issued after a hearing and subject to state court review (three such facts discussed herein)..... 1

Conclusion 5

Table of Cases—

Alabama Public Service Commission v. Southern Railway Co., 341 U. S. 341..... 3

Southern Pacific Co. v. Arizona, 325 U. S. 761, 770 2

Sterling Refining Co. v. Walker, 165 Okl. 45, 25 P. 2d 312 2

Statutes—

Okla. Stats. 1951, Title 52, Sec. 111..... 2

Trade Agreements Extension Act of 1955, Sec. 7, 69 Stat. 166, 19 U. S. C. (Supp. III), Sec. 1352a (b) 5

Constitutional Law—

Oklahoma Constitution, Art. IX, Sec. 20..... 2

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1956.

No. 914

GULF OIL CORPORATION, - - - - - *Appellant,*

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA; RAY C. JONES, WILBURN CARTWRIGHT, and HAROLD FREEMAN, as Members of said Corporation Commission and as Individuals, *Appellees.*

BRIEF OPPOSING MOTION TO AFFIRM.

There are facts of this case which distinguish it from all prior instances where federal abstention has been applied to the review of state administrative orders regularly issued after a hearing and subject to state court review. These are the following:

1. The compulsory purchasing orders were not issued pursuant to a Commission proceeding under the Oklahoma conservation laws, but as an exercise of legislative power.

2. Federal rights could not have been asserted in the only available state court review of the compulsory purchasing orders.

3. The compulsory purchasing orders were made to regulate marketing, and not the conservation of Oklahoma oil production.

These circumstances are shown in the following discussion.

IN THE SUPREME COURT OF THE UNITED STATES.
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vs.
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These circumstances are shown in the following discussion.

The only state court review of orders of the Oklahoma Corporation Commission is by appeal to the Oklahoma Supreme Court. Okla. Stats. (1951), Tit. 52, Sec. 111. Such appeal is judicial only and is upon the record of a proceeding before the Commission. Okla. Const., Art. IX, Sec. 20; *Sterling Refining Co.* v. *Walker*, 165 Okl. 45, 25 P. 2d 312 (1933).

Here, the Commission conducted no proceeding at which it considered the issuance of its initial compulsory purchasing order. It determined to enter this field of regulation in the interval between the close of a session to fix production allowables, held June 26, 1956, and the entry of its allowable order pursuant thereto. The subject of compulsory purchasing was not considered at the session, nor did the Commission give notice that it would be. The compulsory purchasing order was then inserted in the allowable order, and the allowable order predated to the date of the proration session. The compulsory purchasing order was a new assertion of power—not a repetition of a standard provision from prior allowable orders. These facts are admitted of record by the Motion to Dismiss, which the majority below sustained.

These circumstances clothe the compulsory purchasing order with resemblance to a regularly issued conservation order. But they divest it of the substance of a hearing and consideration, and deprive appeal to the Oklahoma Supreme Court of all adequacy to protect the federal rights infringed. For the assertion of those rights under the Commerce Clause requires a record which contains the "relevant factual material which will afford a sure basis for an informed judgment." *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 770. Under these conditions, the suit brought by

Appellant in the court below was the only proceeding available in any court for the protection of federal rights.

This basic aspect of the case differentiates it from *Alabama Public Service Commission* v. *Southern Railway Co.*, 341 U. S. 341, and like cases in which state court review was adequate because the Commission orders had been entered after hearing evidence and argument.

The appearance of Appellant at the proration session held on June 26, 1956, was not to assert federal rights. The predating of the allowable order to that date when it was issued some three days later, and the insertion in it of the compulsory order which was not considered at the session, create the impression that they could have been presented. The facts show that there was not the opportunity, and that Appellant's appearance was only because of its interest as a producer and voluntary purchaser of oil in the production allowables that might be fixed.

Appellant did appear at the next following proration session of the Commission. This was after the action below had been filed and set for trial. Before the session, it had filed its nomination with the Commission calling attention to the exclusive interstate condition of its Oklahoma crude oil purchases and applying for the exemption of all interstate transactions from the mandatory buying orders. It pressed this application at the session, but the order was reissued without exception for interstate transactions. The Commission's discussion at this session frankly and candidly announced the purpose of its compulsory buying orders to regulate marketing, and not the conservation of Oklahoma oil production, as follows:

"Mr. DeBois: Well, there's just so much market for Oklahoma crude——

"Commissioner Freeman: Well, now, there's so

much market for Oklahoma crude, but if they'd cut the imports there would be more market for Oklahoma crude, would there not? Now, let's consider that as citizens of this State, that we want the imports cut, and if we're going to do that as citizens of this State there's a chance to get the imports cut along with these other producing states, and when we do that then our people in Oklahoma and the people throughout the country will be better off.

• • • • • • • •

"Commissioner Freeman: Well, don't you think you ought to join with us in trying to get the nation to shut off 750,000 barrels a day in imports and then we'd be better off?

"Mr. DeBois: Well, if we break the price structure in the attempt——

"Chairman Jones: Well, don't you think that whatever we cut, if we cut, that cut would be absorbed from surrounding states, imports and everything else?

"Mr. DeBois: No, I don't think that's necessarily true.

"Commissioner Freeman: Well, that's what has been done here in the past whenever we sit idly by and let our market go down, other states will come in. Now, we are fighting for Oklahoma and Oklahoma producers.

• • • • • • • •

"Mr. DeBois: Well, I don't believe that any purchaser involved—I say any; there might be one exception—or this Commission has any control over what they bring in by way of imports.

"Commissioner Freeman: Not directly, but more or less indirectly the Commission has some control over it."

The regulation of foreign crude oil imports has become a matter of more immediate concern to the Federal Gov-

ernment than it was when the Jurisdictional Statement was filed. On April 25, 1957, the President of the United States, responding to a memorandum of the Director of the Office of Defense Mobilization, advised that he would cause an investigation, under Sec. 7 of the Trade Agreements Extension Act of 1955, 69 Stat. 166, 19 U. S. C. (Supp. III), Sec. 1352a (b), to determine if crude oil is being imported in such quantities as to threaten to impair the national security.

Conclusion.

The compulsory purchasing orders intrude deeply into the national commerce in crude oil. When the first one issued, the action brought in the court below was the only suit available for the protection of federal rights. These circumstances are the very reason for the creation of federal judicial power. They have existed in no other case of an exercise of federal abstention. Appellant therefore urges that the Motion to Affirm is not well taken.

Respectfully submitted,

RICHARD B. McDERMOTT,
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June 1957.

No. 914. GULF OIL CORP. *v.* CORPORATION COMMISSION OF OKLAHOMA ET AL. Appeal from the United States District Court for the Western District of Oklahoma. *Per Curiam:* The motion to affirm is granted and the judgment is affirmed. MR. JUSTICE FRANKFURTER, MR. JUSTICE DOUGLAS, and MR. JUSTICE BRENNAN would note probable jurisdiction and set the case for argument. *Richard B. McDermott* and *James B. Diggs* for appellant. *Mac Q. Williamson*, Attorney General of Oklahoma, *Richard M. Huff*, Assistant Attorney General, *Charles R. Nesbitt* and *Ferrill H. Rogers* for appellees. Reported below: 147 F. Supp. 640.